

89-227

Supreme Court, U.S.

FILED

AUG 7 1989

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

No. _____

RON BROWN

Petitioner,

v.

VIAL, HAMILTON, KOCH & KNOX, et al,

Respondents'.

ON APPEAL FROM THE U.S. COURT OF APPEALS
(5th Circuit); ON WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT.

Respectfully submitted,

- Ron Brown

3614 Marvin D. Love Frwy

@ S. Tyler

Dallas, Texas 75224

(214) 331-4235

PRO SE

QUESTIONS PRESENTED FOR REVIEW

1. Whether it violates equal protection to allow lay claim adjusters or agents to handle personal injury or property claims for and on behalf of insurance corporations, but deny other lay claim adjusters or agents the opportunity to handle personal injury or property claims for and on behalf of citizens of the United States?

2. Whether it violates antitrust laws for groups with similar interests to use litigation as a means to restrict licensed lay claim adjusters from competing with licensed attorneys as agents for the business of adjusting personal injury or property claims on behalf of citizen/claimants of the United States?

3. Whether the federal district court erred in making a factual determination as to the validity of a prior state court judgment when same was being challenged as a "sham"?

4. Whether the state trial court had jurisdiction to hear Respondents' suit against Petitioner?

LIST OF INTERESTED PARTIES

The following is a complete list of all interested parties to this action:

1. All United States Citizens
2. All Licensed Insurance Claim Adjusters
3. Ron Brown
4. Vial, Hamilton, Koch & Knox
5. Byron L. Falk
6. Touchstone, Bernays, Johnston, Beall & Smith
7. Wade C. Smith
8. Sidney H. Davis, Jr.
9. Passman, Jones, Andrews & Holley
10. Shannon Jones, Jr.

11. Johnson, Bromberg & Leeds
12. Robert R. Roby
13. Robert W. Hartson, Inc.
14. Robert W. Hartson
15. State Unauthorized Practice of
Law Committee, State Bar of
Texas
16. Jim Bloom a/k/a "James D.
Blume"
17. State Farm Mutual Automobile
Insurance Company
18. Harlan D. Holiner
19. Donovan Elliott
20. Ohio Casualty Insurance Company
21. Trelby Edwards
22. Dick Gallatin



- 23. Fireman's Fund Insurance
Company
- 24. Ron Watson
- 25. Van Sims
- 26. Members Insurance Group
- 27. Ruth Hunter
- 28. Leonard Adkins

A handwritten signature in dark ink, appearing to read "Ron Brown", is written over a horizontal line.

Ron Brown



SUBJECT INDEX

	<u>Page</u>
QUESTIONS PRESENTED FOR REVIEW...(Prefix).....	ii - iv
LIST OF INTERESTED PARTIES...(Prefix).....	v - vii
LIST OF AUTHORITIES..(Prefix)..	x - xv
OPINIONS BELOW.....	xvii - xx
JURISDICTION.....	xx - xxi
CONSTITUTIONAL PROVISIONS INVOLVED.....	xxi - xxii
STATEMENT OF THE CASE.....	xxii - I

SUBJECT INDEX (Cont.)

	<u>Page</u>
REASON NO. ONE FOR GRANTING THE WRIT.....	1 - 15
REASON NO. TWO FOR GRANTING THE WRIT.....	16 - 22
REASON NO. THREE FOR GRANTING THE WRIT.....	22 - 24
REASON NO. FOUR FOR GRANTING THE WRIT.....	24 - 30
CONCLUSION AND PRAYER.....	30
PROOF OF SERVICE.....	31 - 33
APPENDIX.....	A1-12, B1-17, C1-42, D1-8, E1-2.



LIST OF AUTHORITIES

AMENDMENTS

Page

UNITED STATES CONSTITUTION

AMENDMENTS

First (1st)..... xxi

Fifth (5th)..... xxi

Fourteenth (14th). xxii, 1

CASES

Amalgamated Transit Union,
Local Division 1338 v.
Dallas Public Transit
Board,

396 U.S. 838 (1968).... 13,

Association of Data
Processing Services
Organizations, Inc. v.
Citibank, N.A.,

508 F. Supp. 91 (1980). 21,



Brown v. Unauthorized
Practice of Law Committee

742 S.W. 2d 34 (Tex. App.
-- Dallas 1987)..... 7-8, 10,

California Motor Transport
Co. v. Trucking Unlimited,

404 U.S. 508 (1972).... 16-17, 20-21,

Davis v. Holland,

168 S.W. 11 (Civ. App.
1914)..... 12,

Eastern Railroad Conference
v. Noerr Motor Freight, Inc.,

365 U.S. 127 (1961).... 19-20,

Farbwerke Hoeschst A.G. v.
M/V "Don Nicky",

589 F. 2d 795..... 22-23,



Gilmere v. City of Atlanta,

774 F. 2d 1495 (1985).. 24,

Goodman v. Beall,

200 N.E. 470 (1936).... 3,9,10,12,
14-15,

International Shoe Co. v.
Washington,

326 U.S. 310 (1945).... 25,

In Re Bodkin,

173 N.E. 2d 440 (1961). 9,

Lee v. Hutson,

810 F. 2d 1030 (1987).. 2,24,

Liberty Mutual Insurance Co.
v. Jones,

130 S.W. 2d 945 (1939). 3-5,7,10,12,



Lowell Bar Association v.
Loeb ,

52 N.E. 2d 27 (1943)... 12-14,

Milliken v. Meyer,

311 U.S. 457 (1940).... 25,

Quarles v. State Bar
of Texas ,

316 S.W. 2d 797 (1957). 9,

Tidal Oil Co. v. Flanagan,

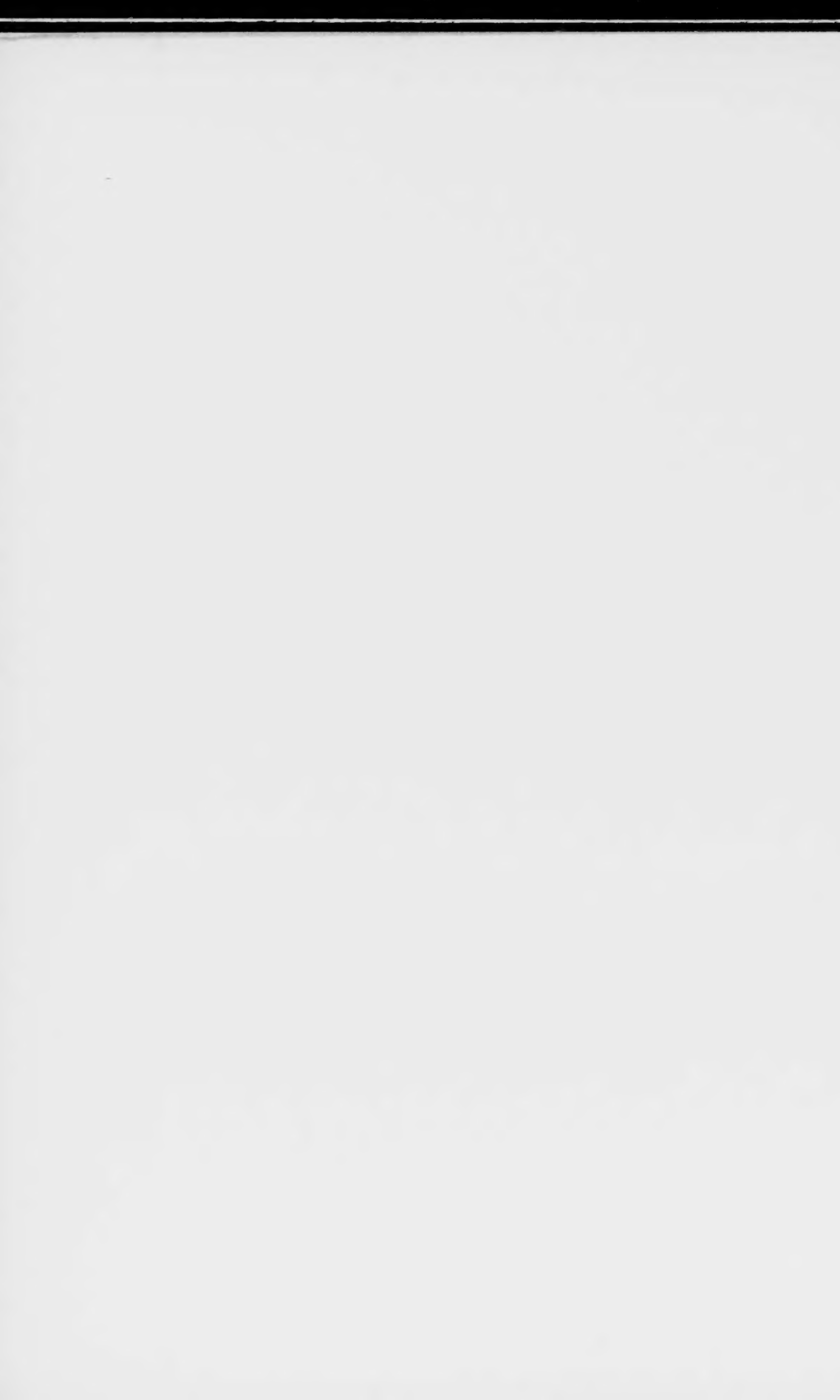
263 U.S. 444 (1924).... xx - xxi,

United Mine Workers of
America v. Pennington,

381 U.S. 657 (1965).... 19-21,

U.S. v. Braniff Airways, Inc.,

453 F. Supp. 724 (1978). 20, 23-24,



U.S. v. Socony-Vacuum Oil Co.,

310 U.S. 150 (1940).... 17,

World-Wide Volkswagon v.
Woodson _____,

444 U.S. 286 (1980)....

CODES

TITLE 28, UNITED STATES CODE

Sections

1651(a)..... xx - xxi,

2101(c)..... xx - xxi,

1257..... xx - xxi,

STATUTES

TEXAS REVISED CIVIL STATUTE
ANNOTATED

Article

320a-1, sec. 19(b). 27,



VERNON'S ANNOTATED TEXAS STATUTE

Articles

21.07-3, sec. 20... 5, 14, 28,

21.07-3, sec. 21... 5, 14, 28-29,

21.07-4, sec. (a).. 12, 14, 19,

MISCELLANEOUS

STATEMENT OF PRINCIPLES
ON RESPECTIVE RIGHTS AND
DUTIES OF LAWYERS AND
LAYMEN IN THE BUSINESS OF
ADJUSTING INSURANCE

CLAIMS..... 5, 12, 27-28,



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

No. _____

RON BROWN

Petitioner,

vs.

VIAL, HAMILTON, KOCH & KNOX, et al.,

Respondents^a.

ON APPEAL FROM THE U.S. COURT OF APPEALS
FOR THE FIFTH (5th) CIRCUIT, NEW ORLEANS
LOUISIANA; ON WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT.



The Petitioner, RON BROWN,
respectfully prays that a writ of
certiorari issue to review the judgment
of the U.S. Court of Appeals for the Fifth
(5th) Circuit, New Orleans, Louisiana,
entered on the 18th day of April, 1989.
Motion for Rehearing was denied on the
12th day of May, 1989.

OPINIONS BELOW

On November 26, 1986, the 160TH
District Court, Dallas County, Texas,
entered judgment against Petitioner in
cause no. 86-8566-H. [App. D]

On September 22, 1987, the Court of
Appeals at Dallas issued its opinion, No.
05-87-00223-CV, affirming the lower court
judgment referenced hereinabove. [App.
C]



On October 26, 1987, the Court of Appeals at Dallas denied Petitioner's motion for rehearing.

On November 9, 1987, Petitioner filed complaint in the U.S. District Court for the Northern District of Texas, Dallas Division, complaining that said state court judgment, No. 86-8566-H, was a "sham", and that such violated the equal protection clause of the Fourteenth (14TH) Amendment of the United States Constitution.

On January 27, 1988, the Texas Supreme Court denied Petitioner's application for writ of error.

On March 2, 1988, the Texas Supreme Court denied Petitioner's motion for rehearing.



On April 15, 1988, the federal district court ordered "that all discovery shall be completed by July 31, 1989, and, that the trial of this case is set for September 5, 1989". [App. E]

On May 12, 1988, the federal district court "reversed" itself and dismissed Petitioner's complaint. [App. B]

On June 7, 1988, the federal district court denied Plaintiff's motion for new trial.

On July 6, 1988, Petitioner filed notice of appeal.

On April 18, 1989, the U.S. Court of Appeals for the Fifth (5TH) Circuit, New Orleans, Louisiana denied Petitioner's appeal. [App. A]



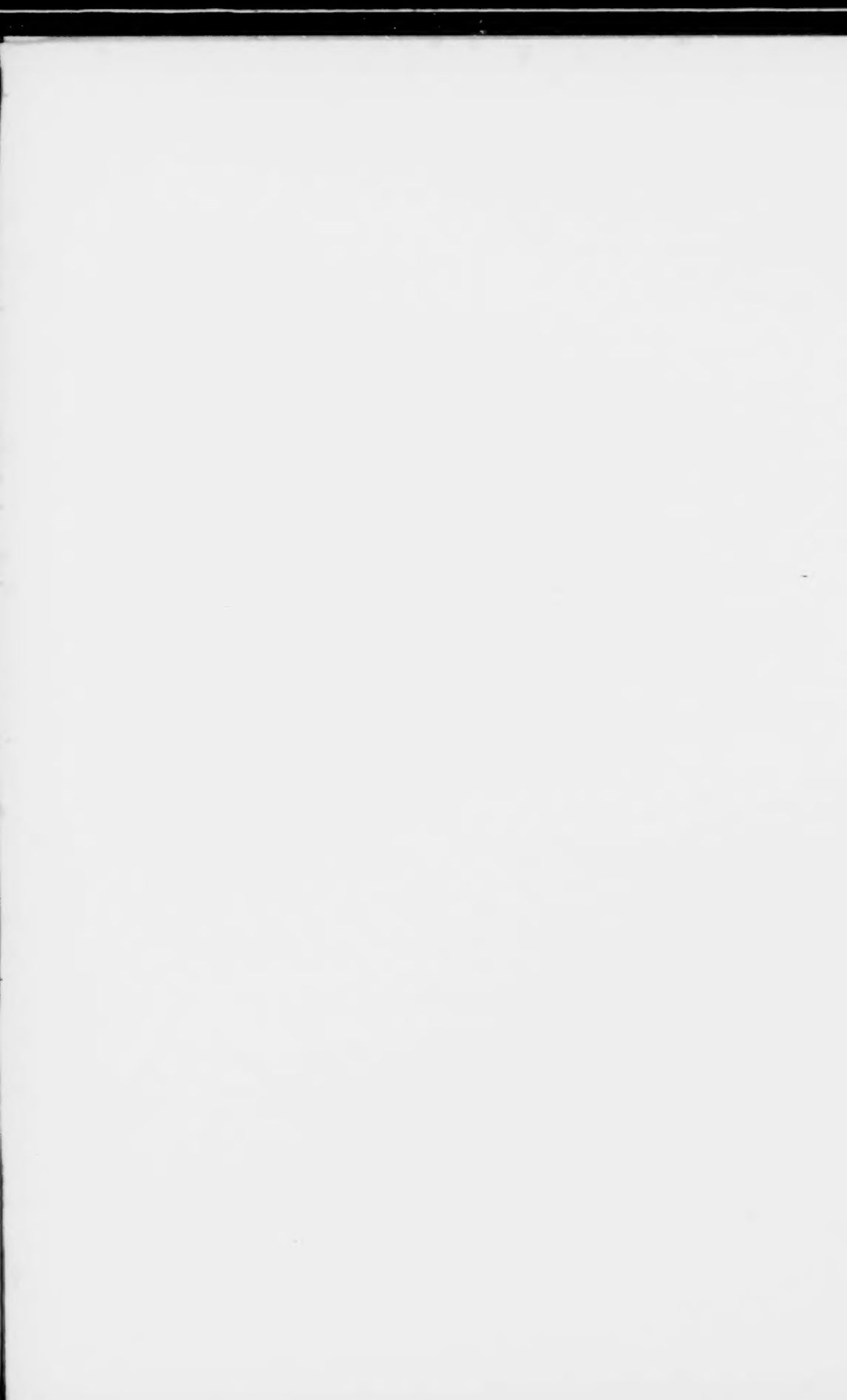
On May 12, 1989, the U.S. Court of Appeals, Fifth (5TH) Circuit, New Orleans, Louisiana denied Petitioner's motion for rehearing. [App. A]

JURISDICTION

On the 18th day of April, 1989, the U.S. Court of Appeals, Fifth (5TH) Circuit, entered judgment denying Petitioner's appeal. [App. A]

Said Court also denied Petitioner's motion for rehearing on the 12th day of May, 1989. [App. A]

Petitioner assert that although review on certiorari is not a matter of right, it is imperative that this honorable Court exercise its power to review this case because it presents every character of



reasons measured by this Court for acceptance, pursuant to Rule 17 (1) a thru c inclusive.

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 2101(c), 1651(a) and 1257. See also, Tidal Oil Co. v. Flanagan, 263 U.S. 444 (1924).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,
Amendment I:

Nor shall any person ... be
deprived of the freedom of
speech, association or press, -
without due process
of law ...

United States Constitution,
Amendment V:

Nor shall any person ... be
deprived of Life, liberty or
property, without due process
of law ...



United States Constitution,
Amendment XIV:

Nor shall any person ... be
deprived of the equal
protection the laws or due
process ...

STATEMENT OF THE CASE

On August 21, 1984, Petitioner began a business called "Ron Brown & Associates" premised on the idea of providing quality low-cost claim assistance as a licensed claim adjuster or agent on behalf of citizens desiring to present claims for personal injury, property or other claims arising under various insurance policies.

The facts of this case reveal that Respondents⁴ refuse to deal with



Petitioner, and encourage others not to deal with Petitioner in his capacity as a licensed claim adjuster and/or agent/representative in the submission of personal injury, property or other insurance claims on behalf of citizen/claimants of the United States.

Also, the facts establish that Respondents[¶] procured a "sham" judgment against Petitioner through the Texas state court system as part of a scheme to eliminate Petitioner from competing for the business of adjusting insurance claims on behalf of citizen/claimants of the United States. [App. D]

Further, the facts show that Respondents[¶] are engaged in services identical to those performed by Petitioner, but, Respondents[¶] enjoy no

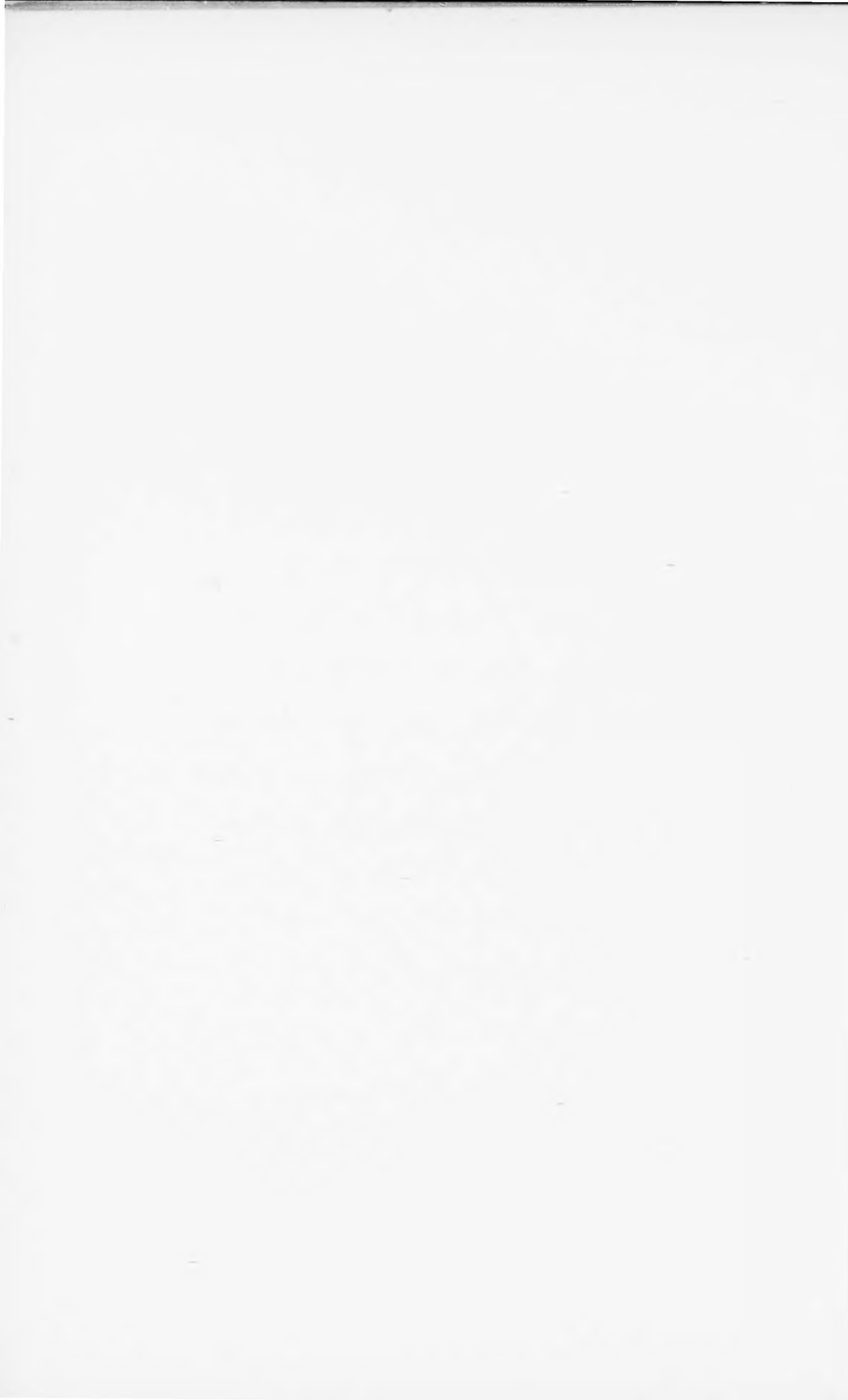


interference whatsoever with the
operation of their businesses.

REASON NO. ONE FOR GRANTING THE WRIT

Where licensed and unlicensed lay
claim adjusters are allowed to adjust
personal injury or property claims for
and on behalf of the clients of insurance
corporations, equal protection demands
that the judgment against Petitioner (a
licensed lay claim adjuster) be reversed
and that Petitioner be allowed to adjust
personal injury or property claims for
and on behalf of his clients, i.e.
citizens of the United States.

"Equal Protection" is a basis
substantive remedy of law afforded every
citizen of this country under U.S.



Constitution Amendment 14th. Lee v.
Hutson, 810 F. 2d 1030 (1987).

A conflict between the states of last resort subsequently addressing this issue has arisen on the application of the equal protection clause as it relates to the adjustment of personal injury or property claims.

In this case, the Texas Supreme Court, and the U.S. Court of Appeals for the Fifth (5th) Circuit, New Orleans, Louisiana, refused to vacate a lower state court judgment against Petitioner that "contracting, contingency or otherwise, to represent a citizen/claimant as an agent in the adjustment of personal injury or property claims constitutes the unauthorized practice of law".



On exactly the same facts, the adjustment of insurance claims by a layperson on behalf of another, the Ohio Supreme Court held that "a layperson may assist another in the submission of claims and appear as representative at proceedings until the claim is first denied". Goodman v. Beall, 130 Ohio St. 200 N.E. 470, 471-473, (1936).

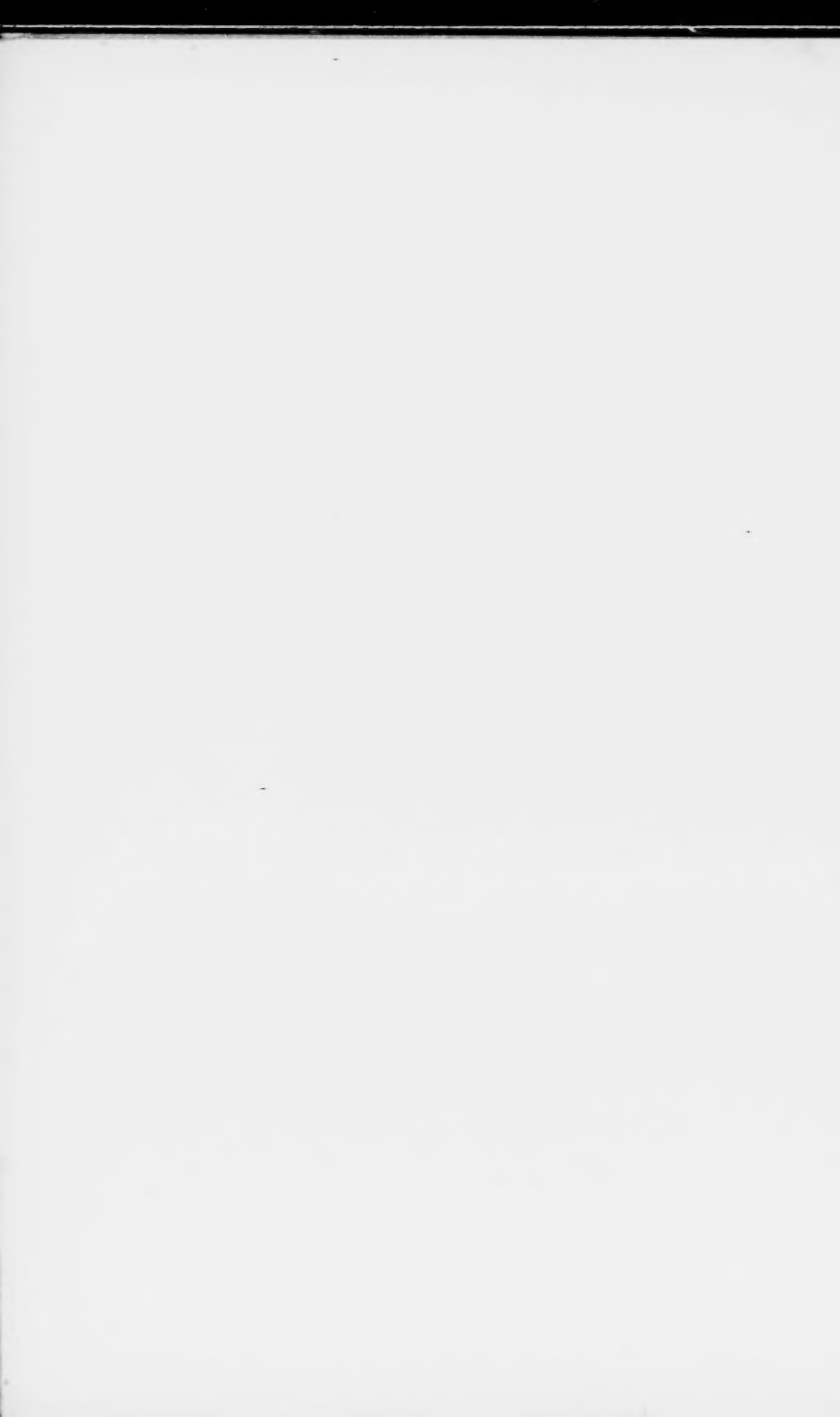
HISTORICAL BACKGROUND
IN SUPPORT OF REASON NO. ONE

The history of this issue can be traced to the Liberty court. There, in 1939, the Supreme Court of Missouri held that "the adjustment of an insurance claim may be handled by a layperson on

behalf of another; provided such layperson does not pass on a question of legal liability". Liberty Mutual Insurance Co. v. Jones, 130 S.W. 945, 961-962 (1939).

However, said Court went too far in its opinion by placing a restraint upon the trade of this, at that time, "a new profession" by restricting lay claim adjusters from seeking employment from citizen/claimants on undisputed claims. Liberty Mutual Insurance Company v. Jones, supra at 955-961.

But, upon rehearing, the Liberty court corrected its mistake and removed said restraint by ruling that "if the statute forbids the doing of the things permitted by the opinion, it is that far



unconstitutional, as against Sec. 1 of the Fourteenth Amendment of the Federal Constitution, U.S.C.A., and Sections 4 and 30, Art. II of the Missouri Constitution". Liberty Mutual Insurance Company v. Jones, supra at 962.

Shortly thereafter, the "American Bar Association, its members, Insurance Corporations and Lay Claim Handlers, meet at the "ABA's" Annual Conference in 1939 and agreed to adopt what is commonly known as "The Statement of Principles on Respective Rights and Duties of Lawyers and Laymen in the Business of Adjusting Insurance Claims".

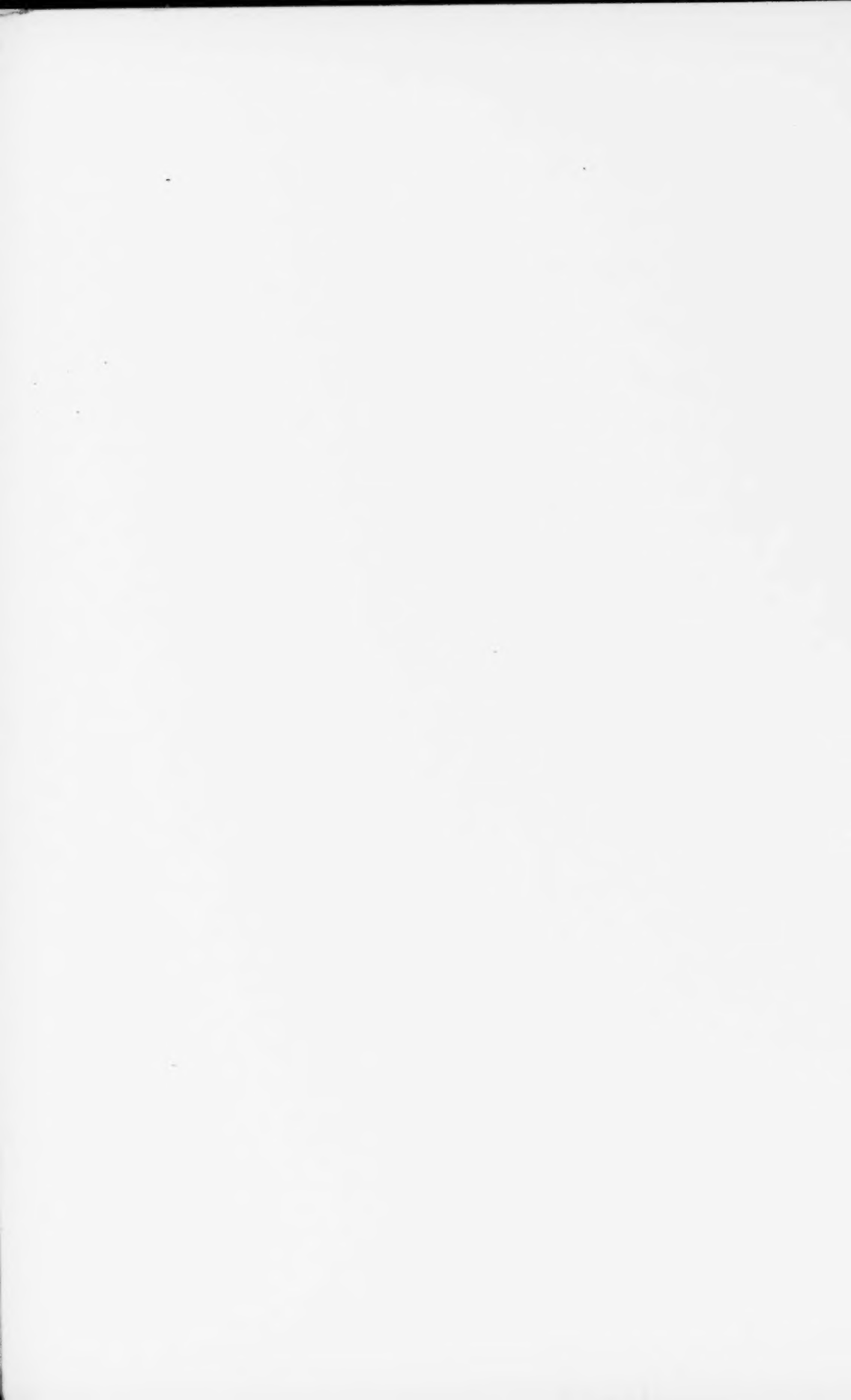
The essential agreement among the parties enumerated in the "Statement of Principles" was that "the adjustment of an insurance claim by a layperson does



not constitute the unauthorized practice of law".

Texas, has even gone a step further to distinguish the business of adjusting insurance claims by a layperson as a separate profession from that of the practice of law by placing the authority to regulate the insurance adjustment business in the hands of its Attorney General and the State Board of Insurance; not the Unauthorized Practice of Law Committee, State Bar of Texas. V.A.T.S., Article 21.07-3, Sec. 20-21, Texas Insurance Code.

During the evolution of the insurance claim adjusters profession, various state courts across the United States have been asked by various Bar



Associations, Insurance Corporations, and its members to adhere to the "unconstitutional" portion of the Liberty opinion which placed a restraint upon the trade of said profession and denied such lay individuals due process and equal protection of the laws provided under the Constitution of the United States.

Below is a sampling of just a few of the opinions handed down by the various state courts with respect to this issue, to wit:

In the instant case, a Dallas state court, at the instance of these Respondents⁷, issued a declaration that your



Petitioner's "contracting to represent claimants in the adjustment of personal injury and/or property claims arising under car accident policies constituted the unauthorized practice of law, and, further issued a permanent injunction against Petitioner which effectively destroyed and eliminated Petitioner from competing in his chosen trade or profession.

The Dallas Court of Appeals affirmed the decision in Brown v. Unauthorized Practice of Law Committee, State Bar of Texas, 742 S.W. 2d 34 (Tex. App. -- Dallas 1987).

The Texas Supreme Court refused to hear your Petitioner's writ of error.



In another Texas case, the Houston Court of Appeals rendered a similar decision denying a layperson the right to engage in the business of adjusting insurance claims on behalf of a claimant.

Quarles v. State Bar of Texas
316 S.W. 2d 797, 803 (1957).

In Illinois, the Supreme Court of that State stated that "there is no decision in Illinois as to whether or not settlement of a personal injury claim constitutes the practice of law". In Re BODKIN, 173 N.E. 2d 440, 441 (1961).

In Ohio, the Supreme Court of that State, on a case directly on point, held "that a layperson may assist another in the submission of claims and appear as representative at proceedings until the claim is first denied". Goodman v. Beall, 130 Ohio St. 200 N.E. 470, 471-73 (1936).

The Ohio and Liberty courts appear to be in agreement upon the essential element of this issue in that both agree "that a layperson may handle insurance claims on behalf of another until either the claim is first denied, or, provided he does not pass on a question of legal liability". Ohio and Liberty; supra.

Indeed, the Dallas opinion rendered in the Brown case can be summed up with the following remarks taken from said opinion:

"One who represents claimants in the handling of claims with insurance companies is guilty of the unauthorized practice of law. That person is not denied the equal protection of the law because other similar persons are allowed to handle claims on behalf of insurance company clients". [App. C]

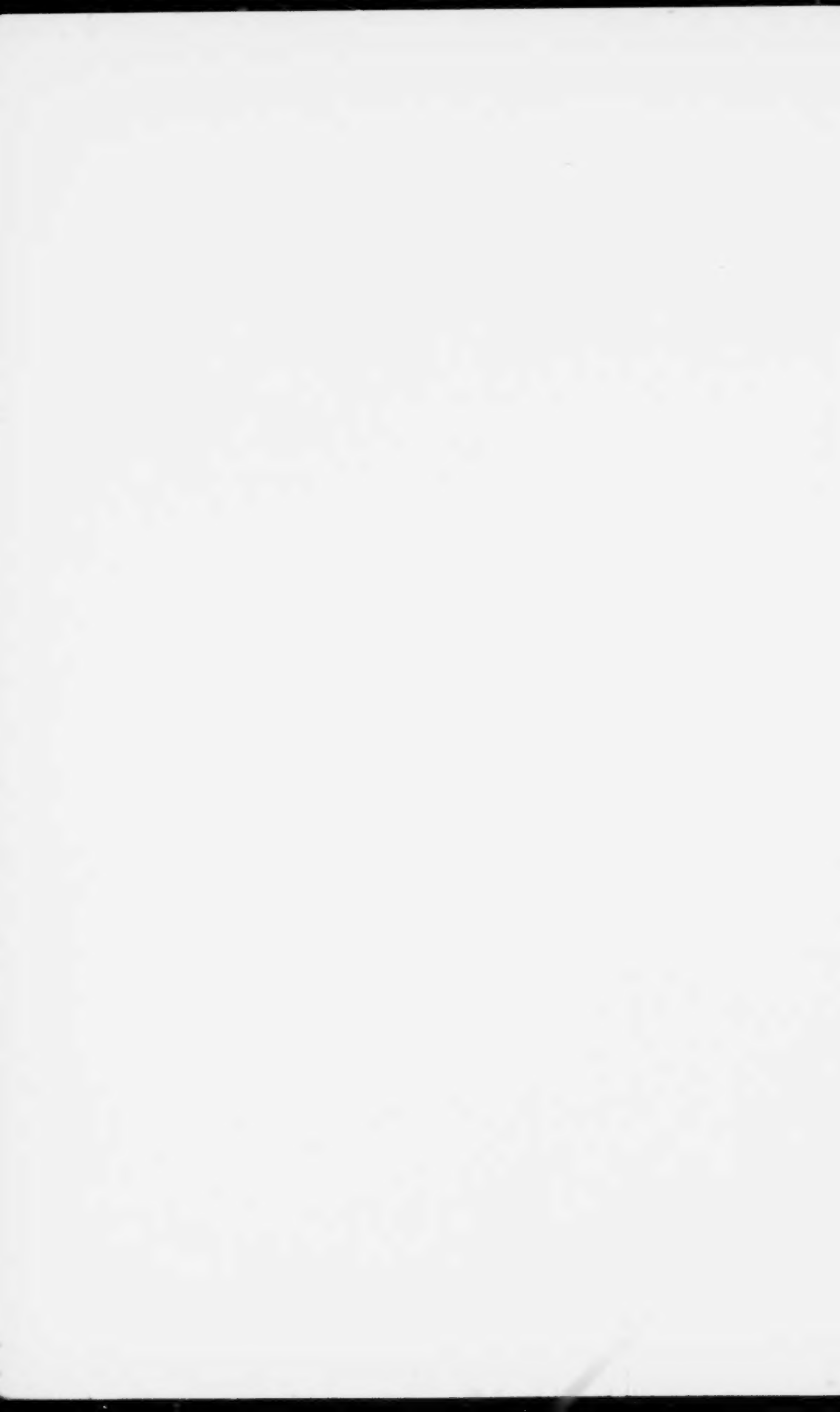


Unquestionably, a conflict between the states of last resort has arisen on the application of the equal protection clause as it relates to the adjustment of personal injury and/or property claims.

This honorable Court, nor any federal court, to date, has addressed this issue.

There is no law, state or federal, which holds that "the business of adjusting insurance claims by a layperson on behalf of another constitutes the unauthorized practice of law or the doing of law business".

Moreover, there is an abundance of legal authority to support the proposition of same as "good law".



Unquestionably, a conflict between the states of last resort has arisen on the application of the equal protection clause as it relates to the adjustment of personal injury and/or property claims.

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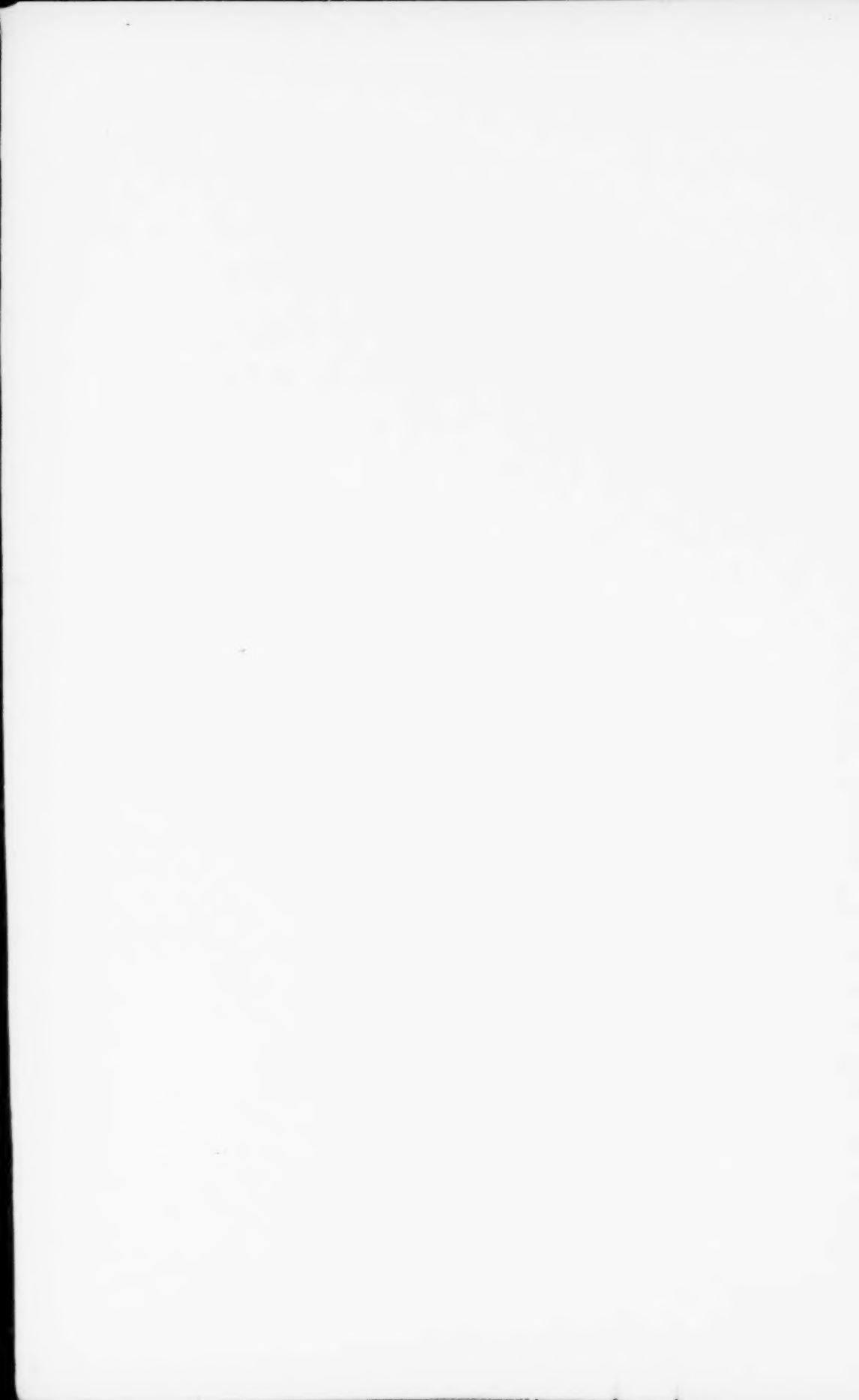
Moreover, there is an abundance of legal authority to support the proposition of same as "good law".



Statement of Principles on Respective Rights and Duties of Lawyers and Laymen in the Business of Adjusting Insurance Claims; V.A.T.S., Article 21.07-4(a), Texas Insurance Code; Goodman v. Beall, 130 Ohio St. 200 N.E. 470; Lowell Bar Association v. Loeb, 52 N.E. 2d 27; Liberty Mutual Insurance Company v. Jones, 130 S.W. 2d 945.

Further, in Davis v. Holland, the Court established the rule that "any law affecting a class of business or vocation must affect all of the specified class uniformly and alike". 168 S.W. 11, (Civ. App. 1914).

Respondents⁷ clearly are attempting to enact, through the judicial process, a law which impairs or prohibits the obligation of Petitioner⁷s contract.



Amalgamated Transit Union, Local Division
1338 v. Dallas Public Transit Board, 396
U.S. 838, 90 S.Ct. 99, 24 L. Ed. 2d 89
(1968).

Finally, the Massachusetts Supreme Court so eloquently recognized that "the proposition cannot be maintained, that whenever, for compensation, one person gives to another advice that involves some element of law, or performs for another some service that requires some knowledge of law, or drafts for another some document that has legal effect, he is practising law. All these things are done in the usual course of the work of occupations that are universally recognized as distinct from the practice of law. There is authority for the



proposition that the drafting of documents, when merely incidental to the work of a distinct occupation, is not the practice of law, although the documents have legal consequences". Lowell Bar Association v. Loeb, 315 Mass. 176, 52 N.E. 2d 27, 31 (1943).

Unquestionably, the business of adjusting insurance claims is a separate and distinct profession from that of the practice of law in Texas. V.A.T.S., Article's 21.07-4(a) and 21.07-3, Sec. 20-21, Texas Insurance Code.

The essential question presented by this issue was fairly addressed in the Supreme Court of Ohio decision, which reads:

"The Court conclude that a layperson may assist another in the submission of claims and appear as representative at proceedings until the claim is first denied".
Goodman v. Beall, 130
Ohio St. 200 N.E. 470, 471-73
(1936).

Thus, again, it is imperative that this honorable Court hear this case and resolve the conflict among the states of last resort.

The disposition "as law and justice require" for Petitioner is a reversal of the judgment against him, and the entry of an order requiring the various states to uniformly comply with the decision of this honorable Court rendered herein.



REASON NO. TWO FOR GRANTING THE WRIT

Where a state sanctions an activity,
trade or profession by the issuance of a
license, may other groups with similar
interests use litigation, without
violating antitrust laws, to restrict
individuals involved in such activity,
trade or profession from competing in the
free play of market forces.

In California Motor Transport Co. v.
Trucking Unlimited, this Court held:

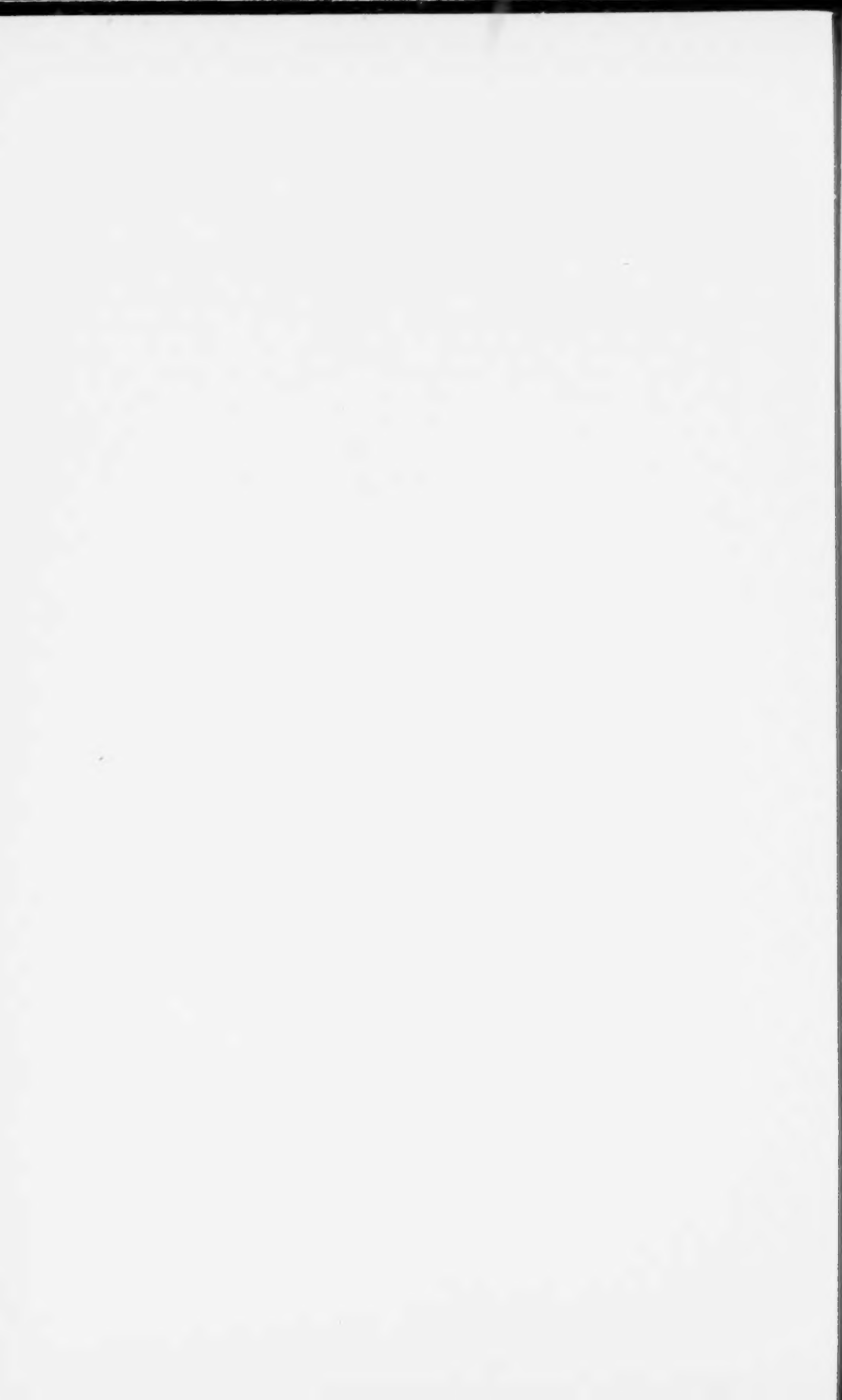
"We conclude that it would be
destructive of rights of
association and of petition
to hold that groups with
common interests may not,



without violating antitrust laws, use channels and procedures of state and federal agencies and courts to advocate their causes and points of view respecting resolution of their business and economic interests vis-a-vis their competitors". 404 U.S. 508, 510 (1972).

In U.S. v. Socony-Vacuum Oil Co., this honorable Court stated that "an activity which directly interferes with the ordinary, usual and free play of market forces, pursuit of business and prevents competition is a violation of the Sherman Act". 310 U.S. 150 (1940).

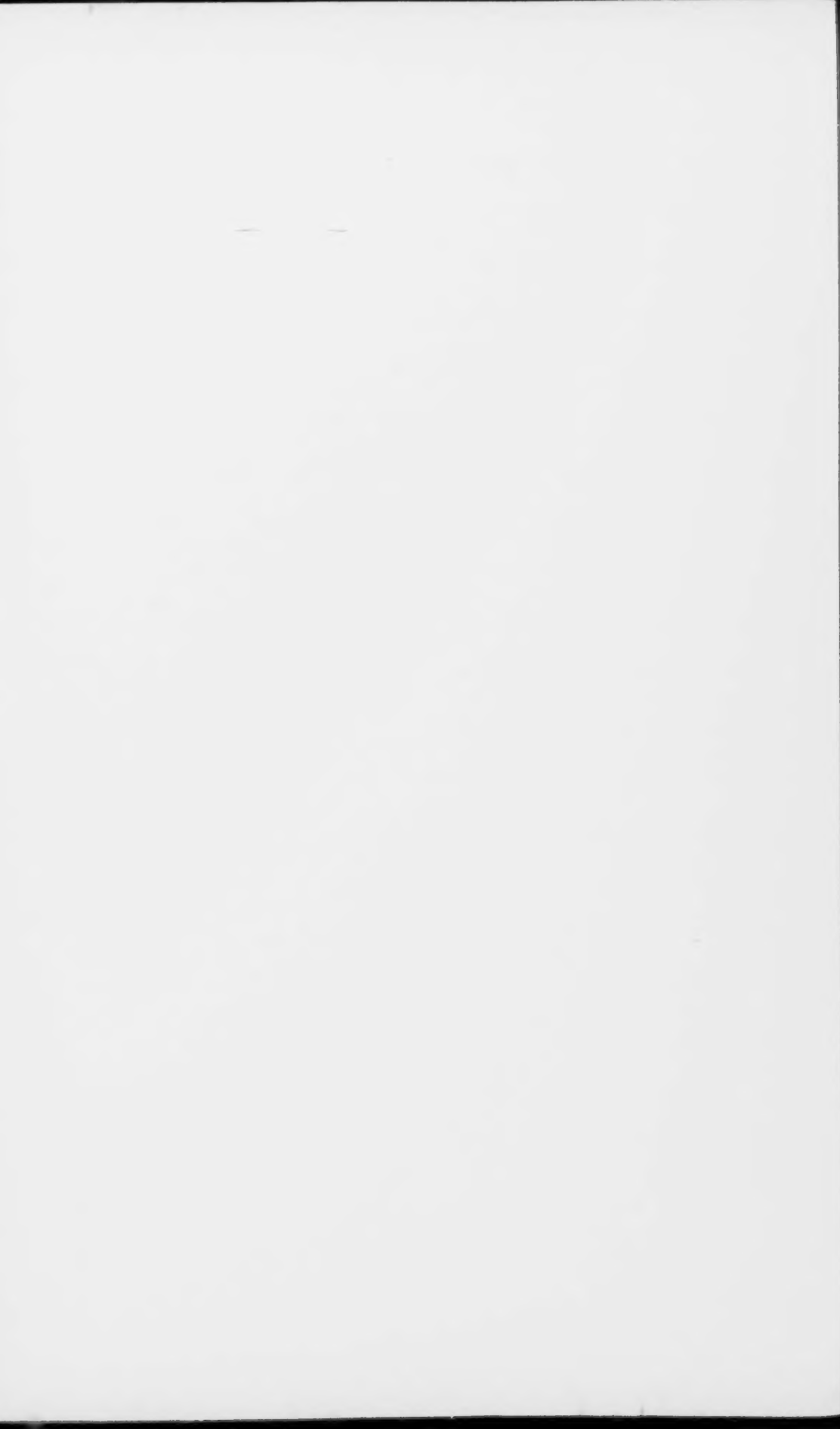
In this case, the Respondents¹ brought suit to enjoin Petitioner from "contracting, contingency or otherwise, to represent citizen/claimants of this



country as an agent in the adjustment of personal injury or property claims".

Such suit was brought under the "guise" that same constituted the unauthorized practice of law. The 160th District Court of Dallas, Dallas County, Texas, entered judgment for Respondents¹. The Dallas Court of Appeals, Texas Supreme Court, U.S. District Court for the Northern District of Texas - Dallas Division, and the U.S. Court of Appeals for the Fifth (5th) Circuit - New Orleans, Louisiana, all either affirmed said judgment or refused to hear Petitioner¹s complaint or appeal.

The facts of this case clearly establish that Respondents¹ are attempting to enact a law through the judicial system which would impair the



obligation of Petitioner's contract without authority vested by statute or otherwise, and, also, Respondents' activity against Petitioner is solely in furtherance of its business and economic interests vis-a-vis its competitor, i.e. Petitioner.

Your Petitioner has a license issued by the State of Texas which permits him to practice his trade or profession on behalf of any person who supervises the handling of claims. V.A.T.S., Article 21.07-4(a), Texas Insurance Code.

In Eastern Railroad Conference v. Noerr Motor Freight, Inc., ["Noerr"], and United Mine Workers of America v. Pennington, ["Pennington"], this Court



stated that "the Sherman Act would be applicable where a lawsuit is brought as a sham to cover what is actually an attempt to interfere directly with the business of a competitor". 365 U.S. 127, 144 (1961) and 381 U.S. 657, 669-671 (1965).

The Noerr-Pennington doctrine was extended to the adjudicative process in California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972).

In U.S. v. Braniff Airways, Inc., the United States District Court of Texas stated that "if litigation is used as an integral part of a scheme to destroy competition, that litigation can lose its protection under the First Amendment". 453 F. Supp. 724, 731 (1978).

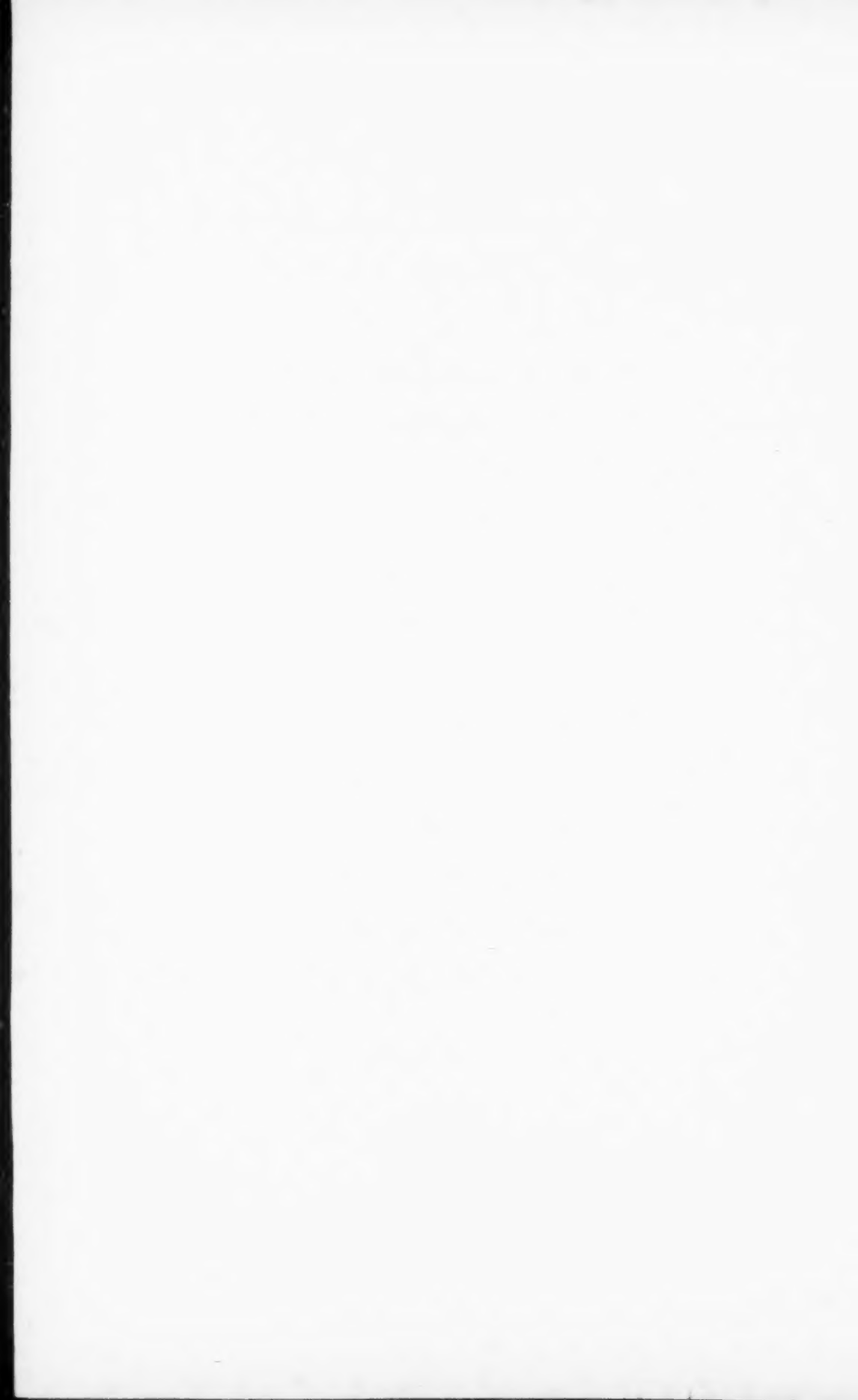
The essential question of this issue



was addressed in an earlier decision of this Court in California Motor Transport Co. v. Trucking Unlimited, supra at 510, 92 S.Ct. at 611.

Further, in Association of Data Processing Services Organizations, Inc. v. Citibank, N.A., the Court held that "the right to petition the court may not be used simply as a cloak to achieve unlawful ends". 508 F. Supp. 91, 93 (1980).

Finally, the Noerr-Pennington doctrine protects First Amendment rights to associate and to petition the government by immunizing conduct designed to influence legislative or executive action from antitrust liability.



Again, the disposition "as law and justice require" for Petitioner is a reversal of the judgment against him, and the entry of an order requiring the various states to uniformly comply with the decision of this Court rendered herein.

REASON NO. THREE FOR GRANTING THE WRIT

Whether the federal district court erred in making a factual determination of the validity of a prior state court judgment when same was being challenged as a "sham".

It is fundamental law that a District Judge may not decide an issue of fact on a motion for summary judgment and/or dismissal. The District Judge is limited to a finding that a material

issue of fact does, or does not, exists.

Farbwerke Hoeschst A.G. v. M/V "Don Nicky", 589 F. 2d 795.

In its Memorandum Ruling, the District Court made a determination that said prior state judgment, which was procured by these very same Respondents⁷ against Petitioner, was valid by ruling that because Petitioner⁷s alleged injury stems from activities previously determined to be illegal, he has not shown a cognizable injury. [App. B]

In light of this impermissible determination of fact, U.S. v. Braniff Airways, Inc., requires that Petitioner be afforded an opportunity to demonstrate at trial the precise nature of, and the extent to which the challenged conduct of Respondents⁷ exceeds, lawful perimeters.



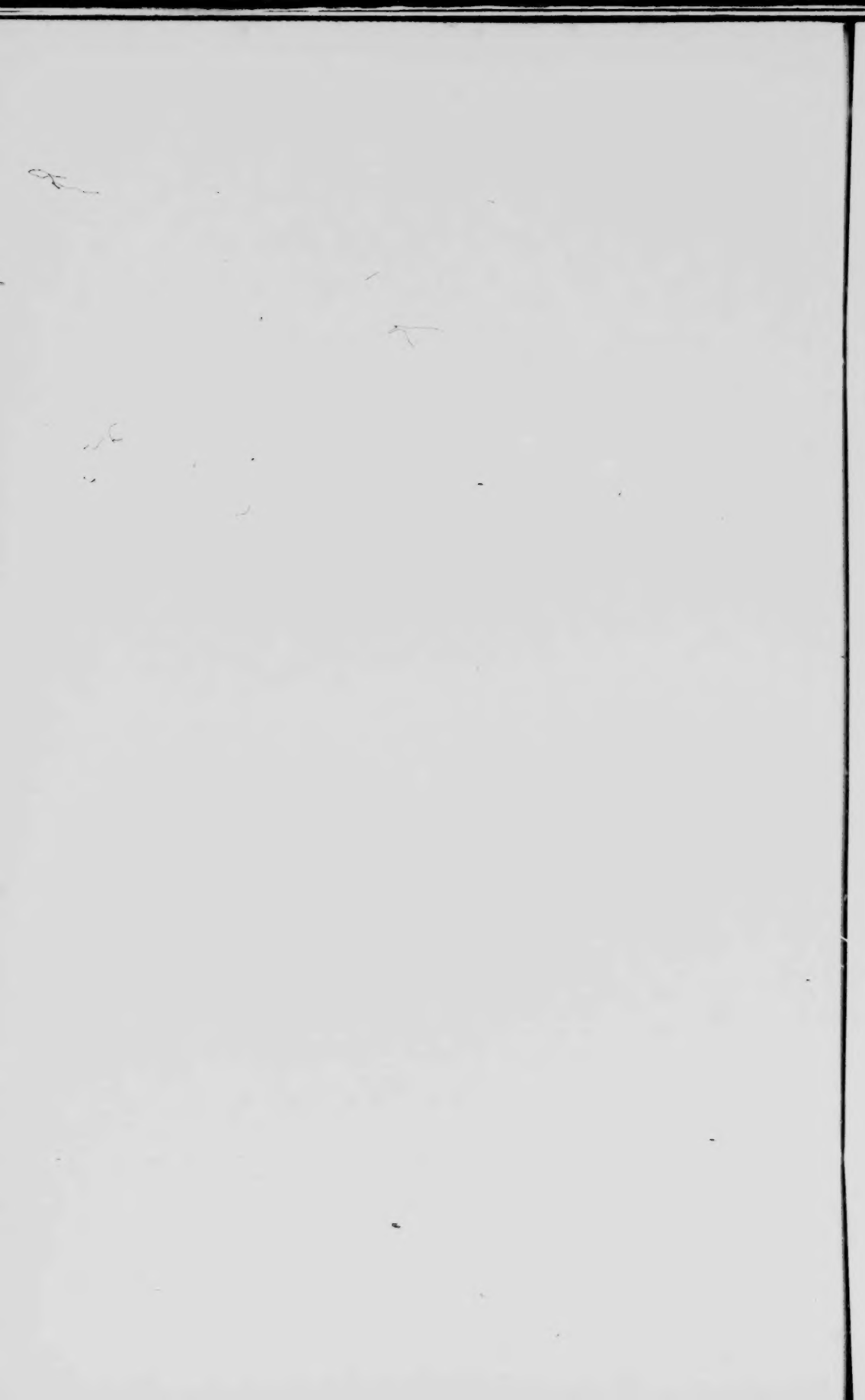
453 F. Supp. 724, 731 (N.D. Tex. 1978).

Moreover, under Lee v. Hutson, if a litigant raises at least a "colorable" equal protection claim, such claim cannot be dismissed. 810 F. 2d 1030 (1987); See also, Gilmere v. City of Atlanta, 774 F. 2d 1495 (1985).

Accordingly, as law and justice require, the summary judgment and/or dismissal granted to Respondents⁷ by the federal district court and its affirmance by the U.S. Court of Appeals for the Fifth Circuit, must be reversed.

REASON NO. FOUR FOR GRANTING THE WRIT

Where a party lacks standing to bring suit, a state court's exertion of subject matter jurisdiction exceeds the limits of due process.



In International Shoe Co. v.

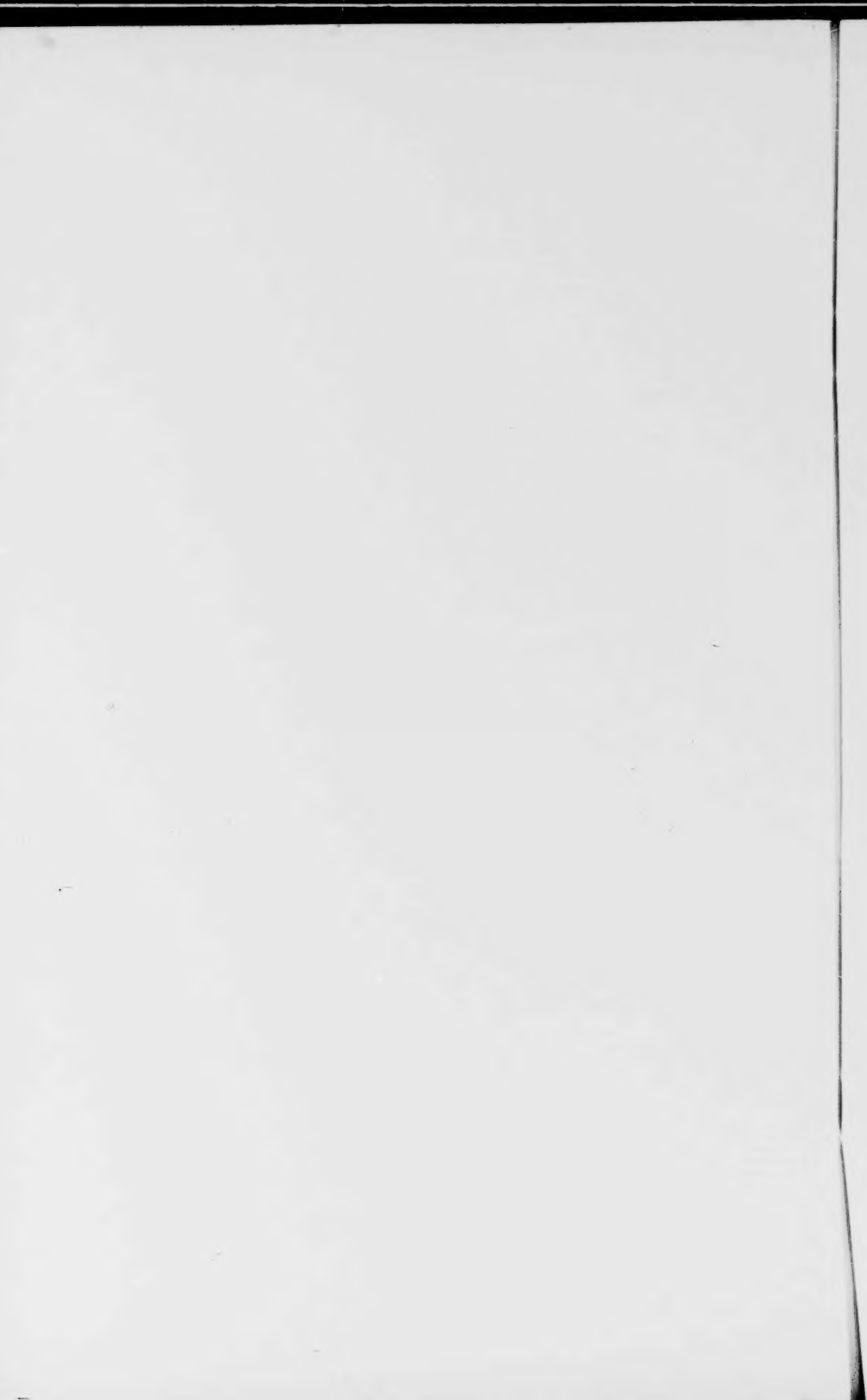
Washington, 326 U.S. 310, 316, 320, 66 S.Ct. 154, 158, 160, 90 L. Ed. 95 (1945); quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S. Ct. 339, 342, 85 L. Ed. 278 (1940), this court stated that "the strictures of the Due Process Clause forbids a state court from exercising personal jurisdiction under circumstances that would offend traditional notions of fair play and substantial justice".

A Court must consider (a) the burden on the defendant; (b) the interests of the forum state; and (c) the plaintiff's interest in obtaining relief.

A consideration of these factors in the present case clearly reveal the unreasonableness of the assertion of jurisdiction over Petitioner.



Here, Petitioner is involved in the adjustment of insurance claims involving clear, accepted or undisputed liability on behalf of citizens of this country as an agent or adjuster. Petitioner's activities are sanctioned by the State of Texas who issued him a license which permits him to practice his trade or profession. Respondents brought suit to enjoin Petitioner from obtaining employment in his chosen trade or profession. Such suit was brought under the "guise" that the business of adjusting insurance claims as an agent or public adjuster constitute the unauthorized practice of law. The Dallas trial court entered judgment for the Respondents, and the Dallas Court of

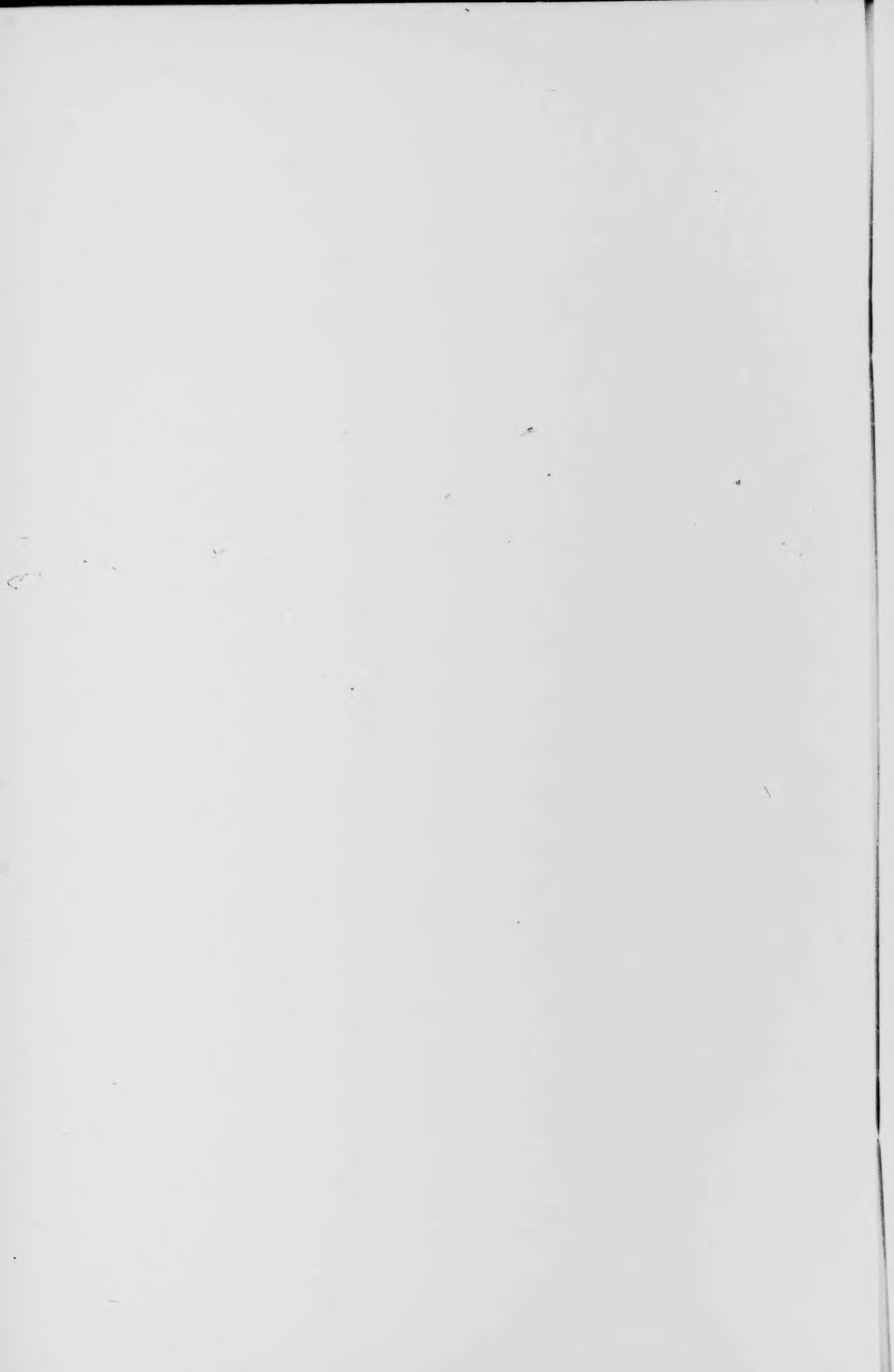


Appeals, Texas Supreme Court, U.S.

District Court and U.S. Court of Appeals affirmed said judgment.

However, the statute under which Respondents⁷ purport to receive its authority, Texas Revised Civil Statute Annotated Article 320a-1, sec. 19(b) (Vernon Supp. 1987), provides, in pertinent part, that "the Texas Supreme Court shall appoint an unauthorized practice of law committee for the State Bar. The Committee shall seek the elimination of ... the unauthorized practice of law ... by actions and methods as may be appropriate ... for that purpose".

In contrast, the Statement of Principles on Respective Rights and Duties of Lawyers and Laymen in the

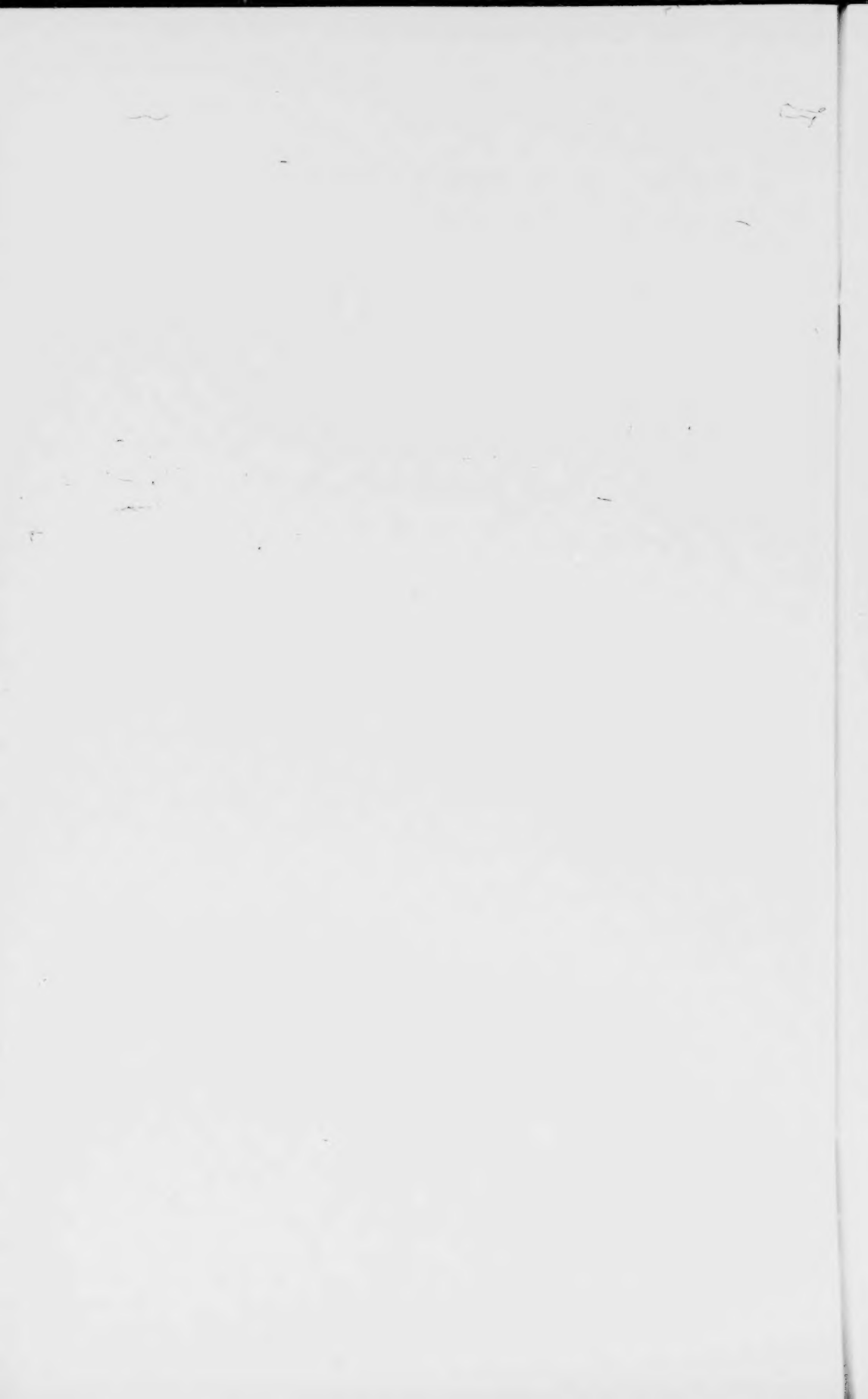


Business of Adjusting Insurance Claims

provides, in pertinent part, that "the business of adjusting insurance claims ... does not constitute the unauthorized practice of law".

Moreover, V.A.T.S., Article 21.07-3, sec. 20, Texas Insurance Code provides, in pertinent part, that "the Attorney General ... may institute any injunction proceeding ... to enjoin any person, firm or corporation from engaging or attempting to engage in any of the business ... in violation of this Act or any provisions thereof".

Further, V.A.T.S., Article 21.07-3, sec. 21, Texas Insurance Code provides "that the administration of this Act shall be vested in the State Board of Insurance ... who may establish, and from



time to time amend, reasonable rules and regulations for the administration of this Act".

Thus, it is undisputed that the business of adjusting insurance claims is not the unauthorized practice of law.

Accordingly, the Respondents⁷ do not have power vested by statute which would permit them to seek injunctive relief to enjoin any person, firm or corporation from engaging in the business of adjusting insurance claims.

Clearly, therefore, the trial court committed fundamental error in allowing Respondents⁷ to obtain such relief on a matter they had no regulatory authority over.

For these reasons, the disposition "as law and justice require" for



Petitioner is a reversal of the judgment against him, and for an entry of an order requiring the various States to uniformly comply with the decision rendered in this case.

CONCLUSION AND PRAYER

For the foregoing reasons,
Petitioner respectfully pray and request that a writ of certiorari issue to review the judgment of the lower courts herein.

Respectfully submitted,

By: 

Ron Brown
3614 Marvin D. Love Fwy
at S. Tyler
Dallas, Texas 75224
(214) 331-4235

PRO SE

Dated: August 4th, 1989



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

No. _____

RON BROWN

Petitioner,

v.

VIAL, HAMILTON, KOCH & KNOX, et al

Respondents⁷.

PROOF OF SERVICE



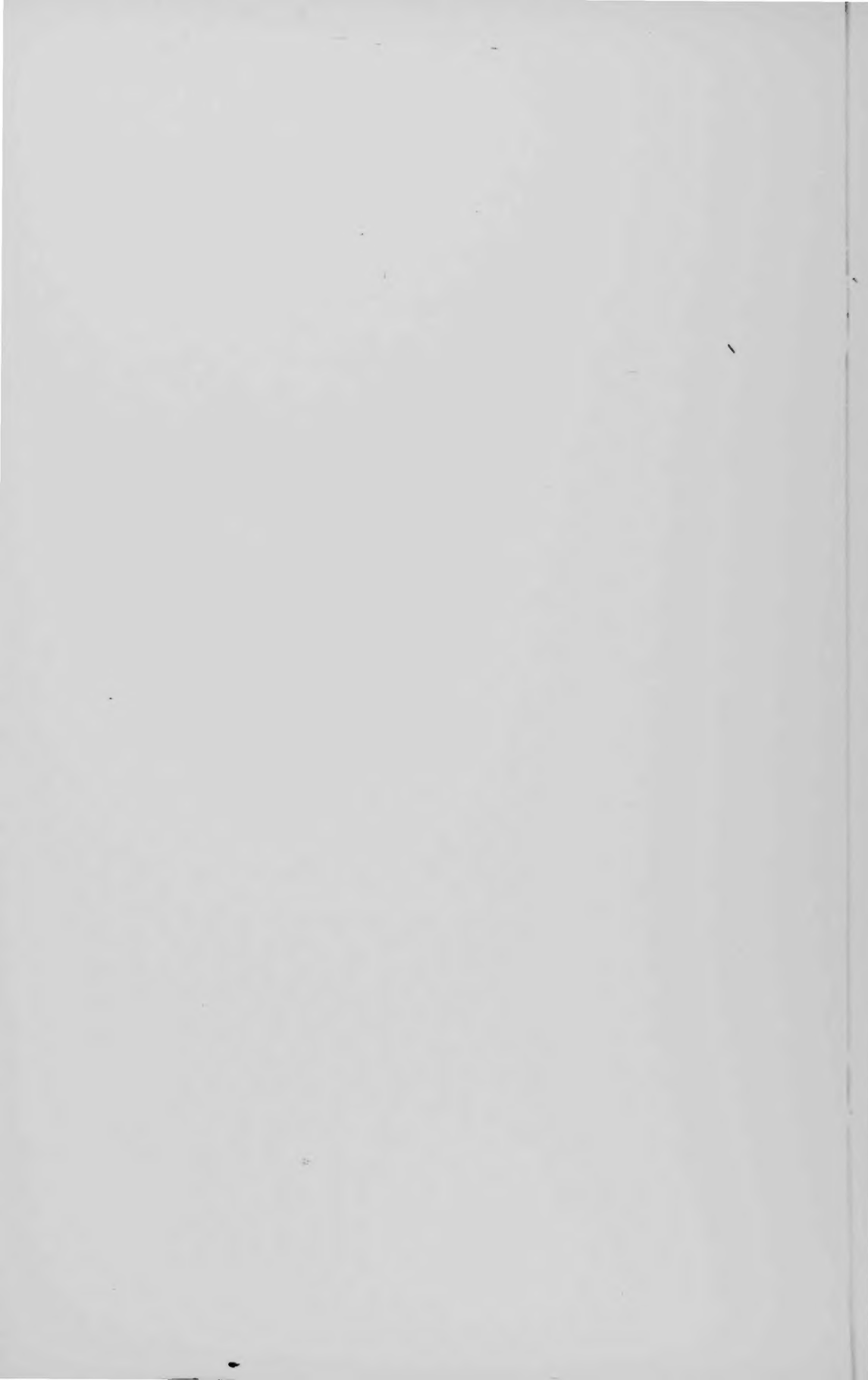
STATE OF TEXAS

ss:

COUNTY OF DALLAS

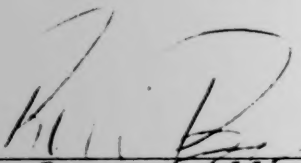
RON BROWN, after first being duly sworn, deposes and says that pursuant to Rule 28 of the Rules of this Court he served the within Petition for Writ of Certiorari on all counsel for the Respondents[¶] by enclosing a copy thereof in an envelope, first class postage prepaid, certified mail, return receipt requested, addressed to the following:

1. Teresa A. Couch, ESQ.
CARRINGTON, COLEMAN, SLOMAN
& BLUMENTHAL
200 Crescent Court
Suite 1500
Dallas, Texas 75201
2. Patrick A. Teeling, ESQ.
WALTER DAVIS & ASSOCIATES
Plaza of the Americas
2116 RPR Tower, LB 319
Dallas, Texas 75201-2882



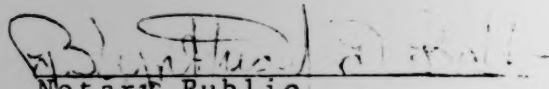
3. Gregory Huffman, ESQ.
THOMPSON & KNIGHT
3300 First City Center
1700 Pacific Avenue
Dallas, Texas 75201
4. Mark A. Ticer, ESQ.
COAKLEY & ASSOCIATES
1420 W. Mockingbird Lane
Suite 800
Dallas, Texas 75247

and depositing same in the United States
mail at Dallas, Texas on this the 4 day
of August, 1989.



Ron Brown - Affiant

SUBSCRIBED AND SWORN to before me
this 4th day of August, 1989.



Notary Public
Dallas County, Texas
My Commission Expires:

89-227

Supreme Court, U.S.

FILED

AUG 7 1989

JOSEPH F. SPANIEL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

RON BROWN,

Petitioner,

v.

VIAL, HAMILTON, KOCH & KNOX, et al.,

Respondents.

APPENDIXES

Respectfully submitted,

Ron Brown
3614 Marvin D. Love Frwy
at S. Tyler
Dallas, Texas 75224
(214) 331-4235

PRO SE

8278

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-1482
Summary Calendar

RON BROWN and RON BROWN
and ASSOCIATES,

Plaintiff-Appellants,

versus

VIAL, HAMILTON, KOCH &
KNOX, ET AL.,

Defendants-Appellees.

Appeal from the United States
District Court for the Northern
District of Texas
(CA-3-87-2654-G)

(April 18, 1989)

APP. A-1



Before REAVLEY, JONES and DUHE, Circuit Judges.

REAVLEY, Circuit Judge:*

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

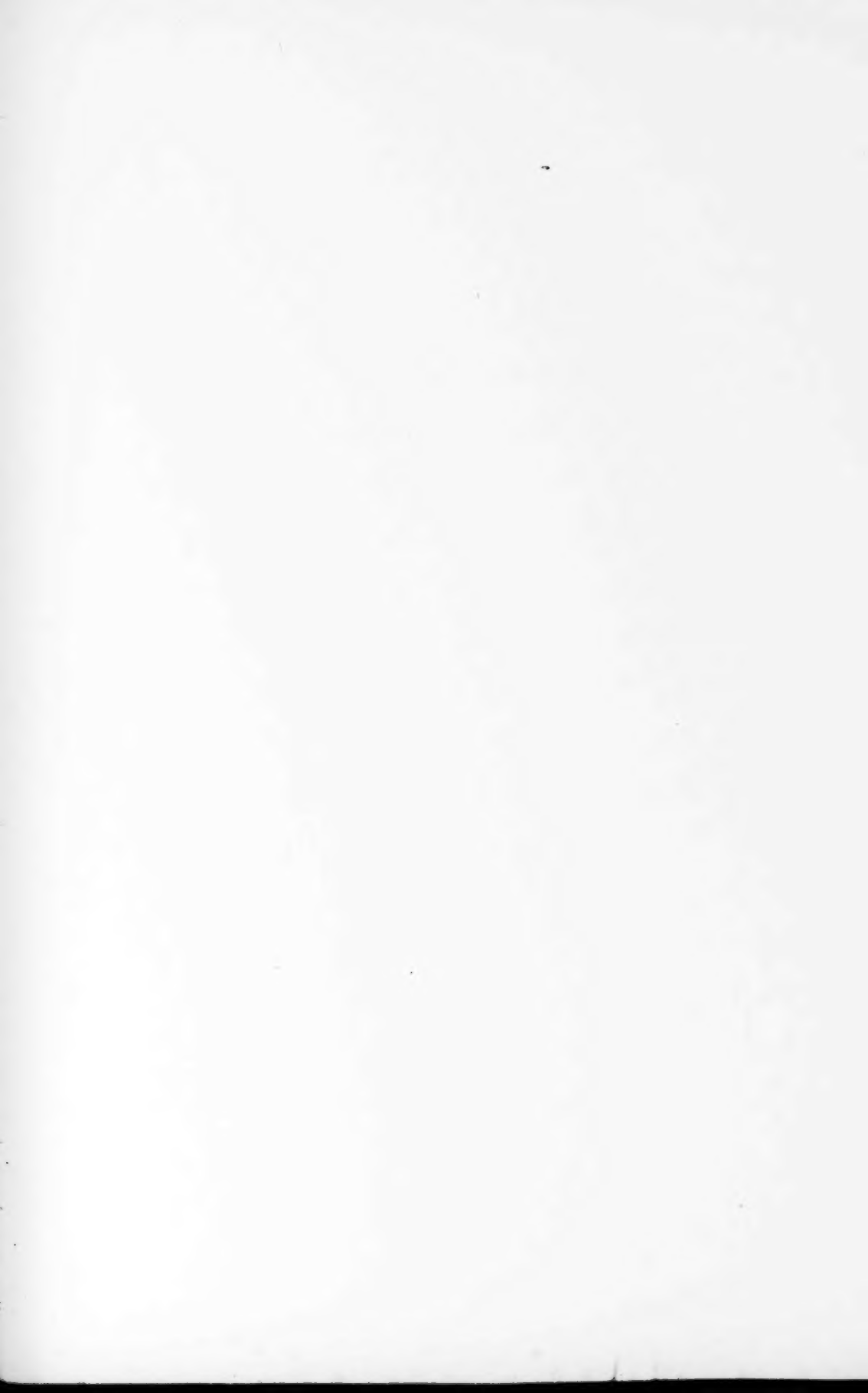
Ron Brown and Ron Brown Associates allege that the prohibition of plaintiffs' business as the unauthorized practice of law constitutes violations of federal antitrust law, federal constitutional law, and state law by the defendants. The federal district court granted the defendants' motion for



summary judgment on the federal claims and dismissed the state claims without prejudice; we affirm.

Background

Ron Brown & Associates conducted business as agent/representative for individuals in resolving their personal injury or property damage claims. Brown contracted with clients, on a contingency fee basis, to effect settlement of their claims. The Unauthorized Practice of Law Committee of the State Bar of Texas sued Brown and his company in Texas state court seeking declaratory and injunctive relief. Brown counterclaimed alleging a violation of his constitutional rights. The trial court found Brown to have engaged in the unauthorized practice of law and permanently enjoined him. The court also denied relief to Brown on his



counterclaims; the judgment was affirmed.

Brown v. Unauthorized Practice of Law
Committee, 742 S.W. 2d 34 (Tex. App. --
Dallas 1987, writ denied).

Simultaneously, Brown brought an action in state court against insurance companies and individual insurance adjusters alleging libel and violations of his constitutional rights. Summary judgment was granted on all claims in favor of defendants.

After resolution of the state actions, Brown brought this action in federal court against law firms and individual lawyers, insurance companies and individual employees of those companies, and the State Unauthorized Practice of Law District Sub-committee, State Bar of Texas and the committee chairman. Brown alleged that the



defendants violated the antitrust laws by placing unlawful restraints on Brown's business. Brown also claimed that the defendants violated his constitutional rights under the First, Fifth, and Fourteenth Amendments. Finally, Brown alleged state claims of libel, slander, and tortious interference of contract.

The federal district court granted the defendants' motion for summary judgment on the federal claims. The court held that Brown lacked standing to bring the antitrust claim and that no existing constitutional right was shown to have been violated. In its discretion, the district court declined to exercise jurisdiction over the remaining pendent state claims and these claims were dismissed without prejudice.

Discussion

Summary judgment is appropriate if it is shown that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). When the only issues to be decided are issues of law summary judgment is appropriate. The district court held that, on both the federal antitrust and constitutional claims, Brown's claims were deficient as a matter of law.

In his complaint, Brown alleged that the defendants violated the antitrust laws, in particular sections 1 and 2 of the Sherman Act. 15 U.S.C. sections 1, 2 (Supp. 1989). These provisions prohibit the monopolization of trade and trusts or agreements in the restraint of trade.



To have standing to assert a private antitrust claim Brown must claim that his "legally cognizable business or property" has been injured by the alleged antitrust violation. Turner v. American Bar Ass'n, 407 F.Supp. 451, 479 (N.D. Tex. 1975), aff'd sub nom. Pilla v. American Bar Ass'n, 542 F.2d 56 (8th Cir. 1976) and Taylor v. Montgomery, 539 F. 2d 715 (7th Cir. 1976) (multi-district litigation).

A state court decision has already held Brown in violation of Texas law prohibiting the unauthorized practice of law. Brown's business is not legally cognizable, and therefore, is not within the protective scope of the antitrust laws. See id. at 479-80. In addition, Brown's antitrust claims, and his contention that the state proceedings



were a "sham", strike directly at the state's actions and policies with regard to professional behavior. The restraints placed on the legal profession are compelled by the directions of the State acting as a sovereign. Bates v. State Bar of Arizona, 433 U.S. 350, 359-60 & n.11, 97 S.Ct. 2691, 2696-97 & n.11, 53 L.Ed.2d 810 (1977). Such state regulatory activities do not violate the antitrust laws. See Bates, 433 U.S. at 359-361, 97 S.Ct. at 2696-98 (citing Parker v. Brown, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943)); Hefner v. Alexander, 779 F.2d 277, 280 (5th Cir. 1985). For these reasons, the district court did not err in granting the defendants' summary judgment motion.

Brown fails to allege the violation of a constitutional right under which he

is entitled protection. Brown has been prohibited from representing clients with disputed liability claims in a manner that constitutes the practice of law.

"There is no constitutional guarantee that non-attorneys may represent other people in litigation." Guajardo v. Luna, 432 F.2d 1324, 1325 (5th Cir. 1970); see also Turner; 407 F.Supp. at 480. In addition, Brown has made no showing that he has been denied equal protection of the laws. Others, defendant insurance adjusters for instance, operate under laws allowing non-lawyers to investigate claims on behalf of any person handling those claims. Tex. Ins. Code Ann. art. 21-07-4 (Vernon 1981 & Supp. 1989).

Brown has not shown, however, how the prohibition of his business, which goes beyond the lawful activities of insurance

adjusters, violates his constitutional rights in any manner.

Finally, Brown challenges the district court's discretionary decision to decline to exercise jurisdiction over the remaining pendent state claims. The district court is not required to exercise jurisdiction under these circumstances. See Kaplan v. Clear Lake City Water Authority, 794 F.2d 1059, 1066 (5th Cir. 1986), citing United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966). The district court correctly declined to exercise jurisdiction and thus avoided needless determination of state law.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-1482

RON BROWN and RON
BROWN and ASSOCIATES,

Plaintiffs-Appellants,

versus

VIAL, HAMILTON, KOCH
& KNOX, ET AL.,

Defendants-Appellees.

Appeal from the United States
District Court for the Northern
District of Texas

ON PETITION FOR REHEARING

(May 12, 1989)

APP. A-11



Before REAVLEY, JONES and DUHE, Circuit
Judges.

PER CURIAM:

IT IS ORDERED that the petition for
rehearing filed in the above entitled and
numbered cause be and the same is hereby
denied.

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF
THE MANDATE.

ENTERED FOR THE COURT:

U.S. Circuit Judge
REAVLEY



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RON BROWN and RON)	
BROWN & ASSOCIATES,)	
)	
Plaintiffs,)	
	)	CIVIL ACTION NO.
VS.)	
	)	CA 3-87-2654-G
VIAL, HAMILTON, KOCH)	
& KNOX, ET AL.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This case is before the court on the following motions: the first amended motion of defendant Jim Bloom for dismissal or, alternatively, for summary judgment and for Rule 11 sanctions; the motion of the State Unauthorized Practice of Law District Subcommittee, State Bar

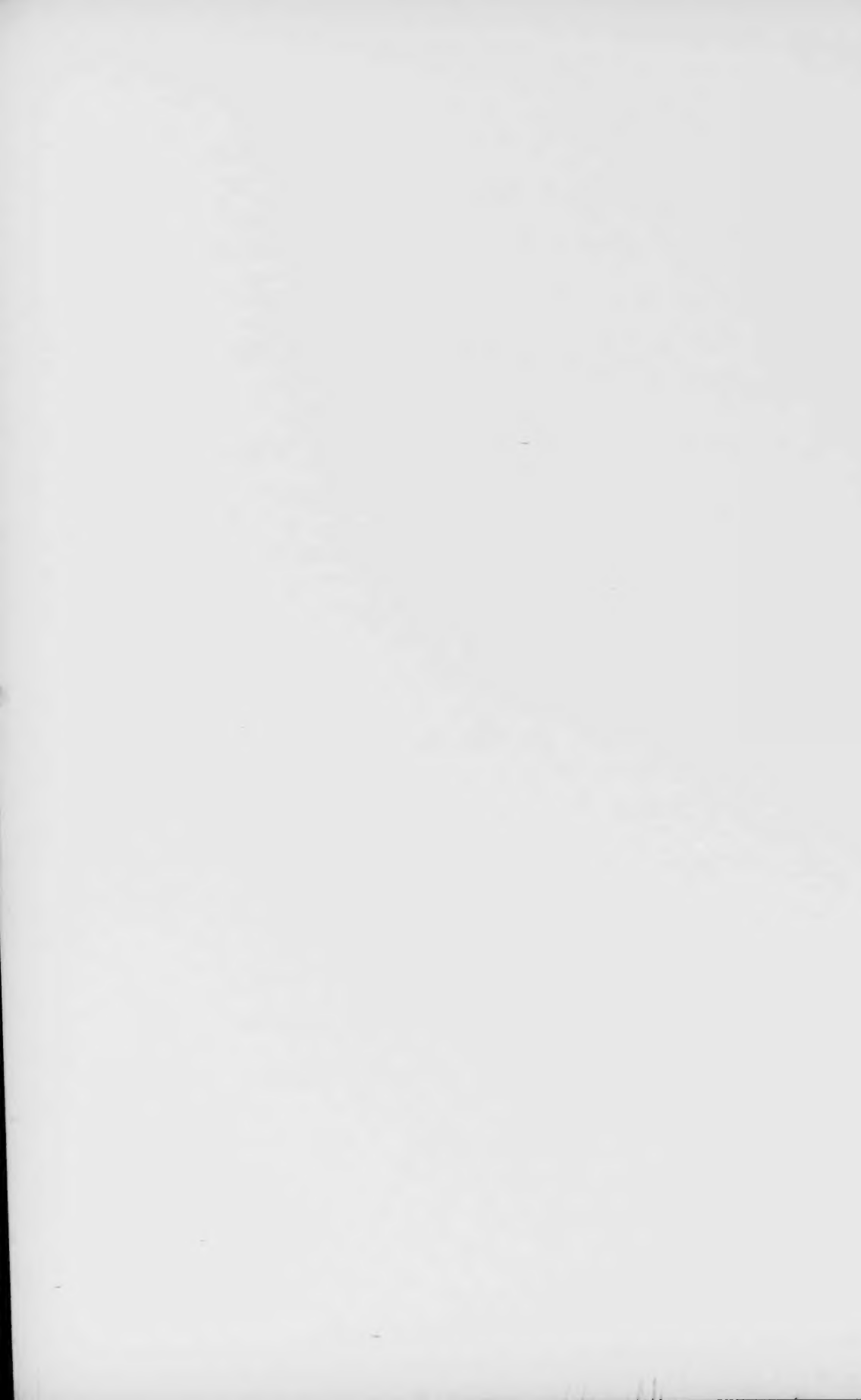


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of Texas ("SUPLC"), for dismissal or, alternatively, for summary judgment and for Rule 11 sanctions; and the motion of defendants Vial, Hamilton, Koch & Knox, et al. to dismiss. After reviewing the motions and supporting briefs, the plaintiffs' replies, and the applicable cases and statutes, the court concludes that the motions to dismiss should be granted but that the motions for sanctions should be denied.

I. Background

Ron Brown ("Brown") filed this pro se action alleging that the various defendants are engaged in a combination and conspiracy in restraint of trade; that the defendants' actions constitute a monopoly and an attempt to monopolize in



restraint of trade; that the defendants have violated Brown's first, fifth and fourteenth amendment rights; that the defendants have libelled and slandered Brown; and that the defendants have tortiously interfered with Brown's contract rights.

The record establishes that defendant SUPLC sued Brown in the 160th Judicial District Court of Dallas County, Texas, in case no. 86-8566-H, to enjoin him from engaging in the unauthorized practice of law. Brown filed a counterclaim in that suit seeking declaratory and injunctive relief on the basis that the action to enjoin him from practicing law was, inter alia, an infringement of his constitutional rights. On November 26, 1986, the 160th



Judicial District Court permanently enjoined Brown from engaging in the unauthorized practice of law. This injunction was affirmed on appeal. *Brown v. Unauthorized Practice of Law Committee*, 742 S.W.2d 34 (Tex. App. -- Dallas 1987, writ denied).

In another state court action, *Brown v. Ohio Casualty Insurance Co., et al.*, No. 86-8882-I, in the 162nd Judicial District Court of Dallas County, Texas, Brown sued a number of insurance companies and adjusters claiming that they had libelled him and violated his constitutional rights. On January 8, 1987, summary judgment was entered in favor of all defendants. The Court of Appeals for the Fifth District affirmed this decision in an unpublished opinion on March 18, 1988.

II. Analysis

A. Antitrust Claims

Brown asserts in counts one and two of his complaint that the defendants entered into a combination and conspiracy to monopolize and to exclude him from conducting his business. Because the court concludes that Brown lacks standing to assert these antitrust claims, counts one and two must be dismissed.

The gist of Brown's argument in counts one and two is that the defendants have violated the antitrust laws by preventing him from engaging in those activities that have previously been adjudged illegal by the state court. To have standing to assert a private antitrust claim, "the [P]laintiff must

sufficiently allege and demonstrate that his legally cognizable business or property has been injured as a proximate result of the alleged violation of the antitrust laws" (emphasis in original). Turner v. American Bar Association, 407 F.Supp. 451, 479 (N.D. Tex. 1975), aff'd sub nom. Pilla v. American Bar Association, 542 F.2d 56 (8th Cir. 1976); see also Martin v. Phillips Petroleum Company, 365 F.2d 629, 632-34 (5th Cir.), cert. denied, 385 U.S. 991 (1966).

Because Brown's alleged injury stems from activities previously determined to be illegal, the plaintiff has not shown a cognizable injury.

In Broker's Title, Inc. v. Main, CCH 1986-2 Trade Cases sec. 67,394 (4th Cir. 1986), a factually similar case,

plaintiff was adjudged by a state court to have engaged in the unauthorized practice of law. It then filed an antitrust suit in federal court. The court granted summary judgment for the defendants, ruling that the plaintiff lacked standing to allege an antitrust injury because his activities were illegal.

In the present case, the 160th Judicial District Court held that Brown's business activities are illegal. Brown therefore lacks standing to argue that his illegal business has been injured by the defendants' actions, so that counts one and two of the complaint must be dismissed.

B. Constitutional Claims

In count three of his complaint, Brown asserts in conclusory fashion that "Defendants [sic] measures, actions and practices implemented against Plaintiff by Defendants as described herein violate Plaintiff's rights under the First (1st), Fifth (5th) and Fourteenth (14th) Amendments of the United States Constitution, i.e., freedom of speech or press; life, liberty or property without due process; equal protection of the laws." While it is unclear exactly how Brown contends the defendants violated his constitutional rights, the court understands his claim to be that the defendants denied his constitutional



rights by enforcing a state statute that prohibits the unauthorized practice of law. Nevertheless, Brown has failed to state a claim for a constitutional violation because there are no rights or guarantees under the first, fifth or fourteenth amendments for a nonlawyer to practice law. *Guajardo v. Luna*, 432 F.2d 1324, 1325 (5th Cir. 1970); *Novak v. Beto*, 320 F.Supp. 1206, 1210 (S.D. Tex. 1970), aff'd in part, rev'd in part, 453 F.2d 661 (5th Cir. 1971), cert. denied, 409 U.S. 968 (1972); Turner v. American Bar Association, above, 407 F.Supp. at 478. Moreover, state laws prohibiting the unauthorized practice of law do not violate the first, fifth or fourteenth amendments. Guajardo, above, 432 F.2d at 1325; *Lindstrom v. State of Illinois*, 632



F.Supp. 1535, 1538 (N.D. Ill. 1986),
appeal dismissed, 828 F.2d 21 (7th Cir.
1987).

C. Libel, Slander, and Tortious
Interference With Contract Claims

The complaint alleges that subject matter jurisdiction of these claims is proper here because federal questions involving antitrust and constitutional law claims have been asserted. For the reasons stated above, however, Brown's constitutional and antitrust claims must be dismissed. Because federal question jurisdiction is now absent, the court must determine whether diversity jurisdiction exists under 28 U.S.C. sec. 1332. A review of the complaint



evidences that there is no diversity of citizenship between Brown and defendants. Thus, the court must exercise its discretion in deciding whether to maintain the pendent state court claims. See, e.g., In re Carter, 618 F.2d 1093, 1104-05 (5th Cir. 1980), cert. denied, 450 U.S. 949 (1981). The court exercises this discretion by concluding that the state tort claims should also be dismissed. 1 See United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966)("if the federal claims are dismissed before trial, ... the state claims should be dismissed as well").



1 Brown has already litigated at least some of these claims in state court. Thus, it is readily apparent that principles of res judicata and/or collateral estoppel may bar relief on these claims.

D. Claim for Injunctive Relief

In count six of the complaint, Brown seeks to enjoin defendants from future acts in violative of the antitrust laws. Because Brown lacks standing to assert the antitrust claims alleged in counts 1 and 2, his claim for injunctive relief in count 6 must also fail.



III. Conclusion

For the reasons stated above, Brown's claims against all defendants are DISMISSED (the state law claims for libel, slander, and tortious interference with contract are DISMISSED without prejudice). Defendants' motions for sanctions are DENIED.

SO ORDERED.

May 12, 1988.

A. JOE FISH
U.S. District Judge



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RON BROWN and RON)	
BROWN & ASSOCIATES,)	
)	
Plaintiffs,)	
	)	CIVIL ACTION NO.
VS.)	
	)	CA 3-87-2654-G
VIAL, HAMILTON, KOCH)	
& KNOX, ET AL.,)	
)	
Defendants.)	

ENTERED ON DOCKET
5-13-88 PURSUANT
TO F.R.C.P. RULES
58 AND 79a.

JUDGMENT

For the reasons stated in the

memorandum order of this date, it is
ORDERED that plaintiffs take nothing
against defendants and that defendants
recover their costs of court.

May 12, 1988.

A. JOE FISH
U.S. District Judge

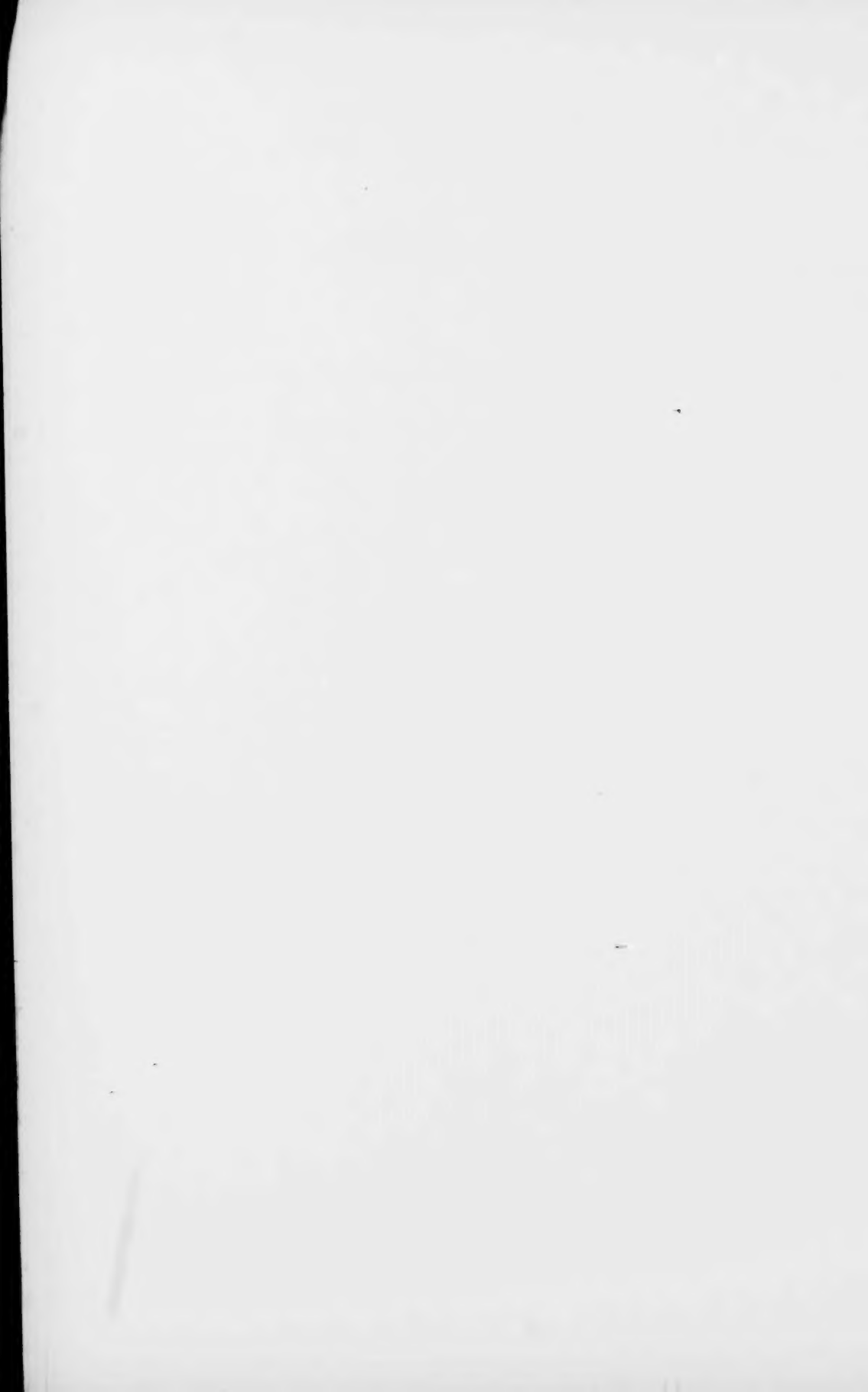


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RON BROWN and RON)	
BROWN & ASSOCIATES,)	
)	
Plaintiffs,)	
	)	CIVIL ACTION NO.
VS.)	
	)	CA 3-87-2654-G
VIAL, HAMILTON, KOCH)	
& KNOX, ET AL.,)	
)	
Defendants.)	

AMENDMENT TO MEMORANDUM ORDER

The court's memorandum order of May 12, 1988, is hereby amended to include the motion to dismiss and for Rule 11



sanctions of defendant members Insurance Group, Ruth Hunter, and Leonard Adkins. Consistent with the May 12, 1988 order, the motion to dismiss is GRANTED and the motion for sanctions is DENIED.

SO ORDERED.

May 16, 1988.

A. JOE FISH
U.S. District Judge



COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-87-00223-CV

RON BROWN & RON
BROWN ASSOCIATES,

FROM A DISTRICT
COURT

APPELLANTS,

V.

OF

UNAUTHORIZED PRACTICE
OF LAW COMMITTEE,
STATE BAR OF TEXAS,

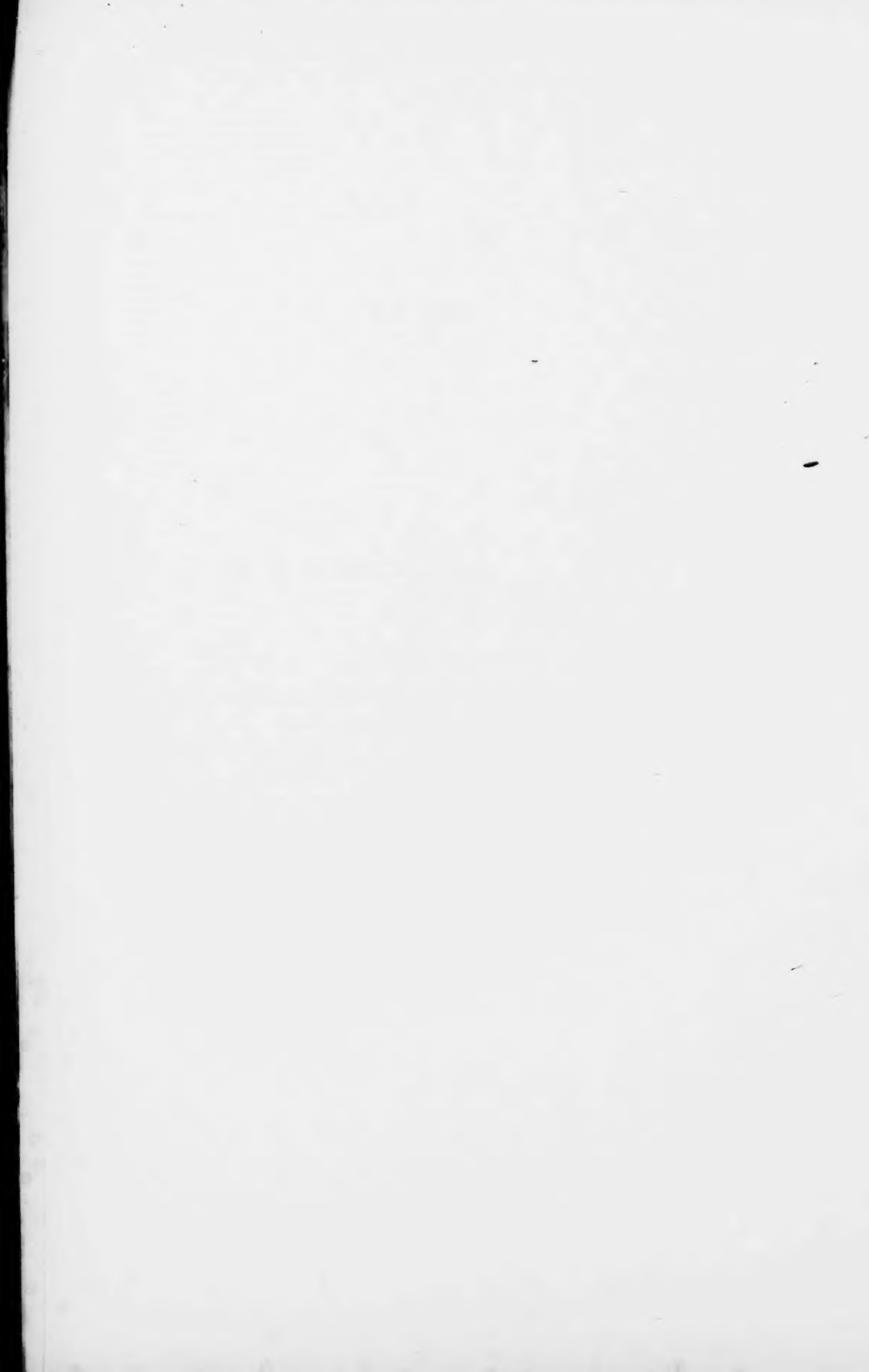
APPELLEES.

DALLAS COUNTY,
TEXAS

BEFORE JUSTICES DEVANY, STEWART AND ROWE
OPINION BY JUSTICE STEWART
SEPTEMBER 22, 1987

The Unauthorized Practice of Law
Committee of the State Bar of Texas

APP. C-1



(the Committee) sued Ron Brown and Ron Brown and Associates (referred to collectively in the singular as "Brown"); the Committee sought a declaration that certain acts and practices engaged in by Brown constituted the practice of law; the Committee also sought injunctive relief. Tried before the court, the judgment: (1) listed six activities in which the court found Brown to have engaged, (2) declared that these six activities constitute the practice of law, and (3) granted the Committee permanent injunctive relief. Brown brings eight points of error. We affirm.

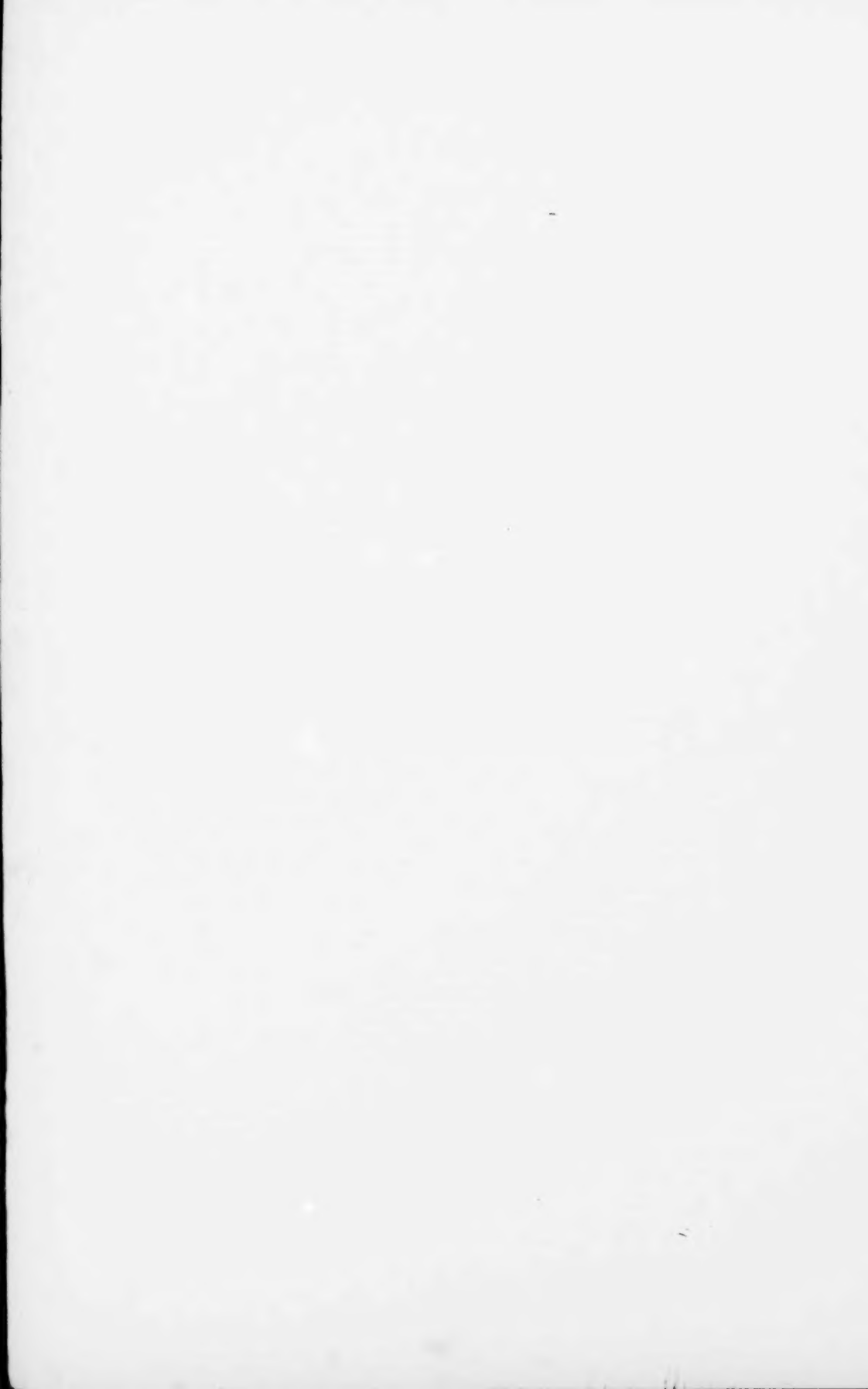
FACTS

Perry C. Post III testified that he was the chairman of the Dallas Subcommittee of the Unauthorized Practice



of Law Committee of the State Bar of Texas. He stated that the subcommittee received four or five complaints with regard to Brown and that the subcommittee authorized Claudia Slate to investigate the allegations against Brown. At a hearing, Brown told the subcommittee that he started his agent business in July or September of 1985 and that he was representing twelve to fifteen persons at that time. The subcommittee recommended to the full committee to file suit against Brown to enjoin his activities. The state committee authorized the suit.

At trial, Brown admitted that he was not an attorney; however, he stated that he did have legal training. He explained that he went to the Brownwood Institute for paralegal study for one year. He



also stated that he worked for various attorneys on a free-lance basis. Brown testified that he had been in this business for about one year.

The record reflects the following undisputed facts. Ron Brown conducted a business in which he entered contracts with individuals to represent them in resolving their personal injury and/or property damage claims on a contingent fee basis. Prior to April 1986, Brown used a form contract that provided that Brown, as agent, was authorized to effect a settlement or compromise of the client's claim, subject to client approval, or to assist the client in retaining legal counsel. The contract further provided that if legal counsel was not obtained, Brown would get one-third of the amount paid to settle



his client's claim, but he would receive forty percent of any amount received after obtaining counsel to file suit and he would pay the attorney's fee from his portion. Brown also reserved the right to select legal counsel.

In April 1986, after the investigational hearing on March 25, 1986, Brown modified the contract form he was using to reflect that Brown, as agent, "was authorized to present factual data and general background information regarding the incident [from which the client's claim arose] and to effect a tentative settlement or compromise, subject to CLIENT approval." The modified contract retained the provision that neither the agent nor the client could finalize a settlement without the other's approval but added, "and only



after CLIENT has conferred with an attorney to advise such CLIENT of the nature and binding effect CLIENT(S) [sic] acceptance of said tentative agreement has within the judicial system." It further provided that the agent has specifically held out to the client that he is not an attorney and "is not to in any way engage in the practice of law in the performance of said duties." This form deleted the provision for Brown to select legal counsel and for an increased percentage of the recovery if an attorney was obtained; instead, this form provided for a twenty percent contingent fee of any amount received by compromise or settlement and, if any attorney became necessary, agent (Brown) would receive \$45.00 per hour for a maximum of forty hours.



In identical affidavits of three of his clients, **which** are attached to Brown's pleadings, 1 the clients state:

I hired Ron Brown, of RON BROWN & ASSOCIATES, to act as my agent/representative in assisting me in presenting, processing and resolving all claim(s) arising out of said accident.

Mr. Brown informed me that the type of services he would provide in my behalf would be as follows:

- a) assist me with completing blank claim form(s) provided by insurance companies;
- b) make telephone and/or personal appearances along with or in my behalf in said claim(s) as my spokesperson;



c) assist me in obtaining
medical reports and bills
from my physician(s);

1 The parties stipulated that the
trial court could take judicial notice of
"all papers on file in this cause," and
the judgment so reflects.

d) assist me in
ascertaining my losses;

e) submit letter(s) to
insurance companies notifying
them of (1) general
background information
relative to what, when, where
and how the accident/incident
occurred as I related same to
him, (2) names and addresses
of my treating physician(s),
(3) names and addresses of my
employer(s), and, if need be,



(4) he would submit all proposed offers of settlement at my request.

Mr. Brown never represented himself to me as an attorney; never advised me of any legal rights, privileges or duties under the law; nor did he advise me whether to pursue any claim(s). Mr. Brown always told me that I could seek the services of an attorney of my own choosing or that he would recommend an attorney, if requested by me, at any time.

Further, Mr. Brown informed me that his services would cease one (1) year from the date of my accident, and, if my claim(s) were not resolved within that period, he would urge that I seek the services of an attorney.



Mr. Brown never advised me to accept or reject any offered sums of money in settlement of my claim(s), he merely presented all offers that were advanced and left that decision completely with me whether to accept or reject same.

The record also reflects the testimony of two insurance adjusters with whom Brown dealt on behalf of clients. Ruth Hunter, a claims representative for Members Mutual Insurance Company, testified that she received maybe half a dozen letters of representation from Brown, saying he was representing someone with respect to an automobile accident.

- The persons represented by Brown were either the insured under a Members policy or were involved in an accident with an insured of Members and making a claim against Members' insured. Hunter stated that normally Brown would send a specialist packet for his client, that her job was to evaluate the claim and get back to Brown regarding settlement of the claim; that there were occasions when she had made an offer, he made a counteroffer and there was dialogue back and forth to reach an agreeable number; that this discussion could be called negotiation of the claims; that she actually settled claims with individuals Brown was representing; that "Ron Brown, Attorney at Law," was a co-payee on the insurance



draft on every occasion in which a settlement was reached; that she believed Brown was an Attorney "because he conducted himself the way other attorneys did. He sent the letter of representation. He sent his expenses. He called me periodically." Hunter also testified that Brown had never told her he was an attorney; that she assumed it; that she did not know whether Brown endorsed the insurance drafts as "agent/representative" instead of as "attorney at law;" and that in her ten years as an adjuster, Brown was the first agent who had ever presented her a claim to handle, all other accident claims having been from attorneys.



Van Simms, a liability claims supervisor with Fireman's Insurance Company, testified that when he was a claims representative he recieved a letter of representation from Brown concerning an automobile accident involving Joanne Bryant, one of Fireman's insureds. Brown was representing Eunice King and Norma King regarding a personal injury to Eunice's neck and shoulders and regarding property damage. In response to Brown's letter, Simms called Brown and told him that the company had already accepted liability on the case and that "we had accepted the claim." Later Brown wrote Simms a second letter indicating that his client was still receiving the care of a physician and that "I would be

amendable [sic] to a resolution of this matter on an estimated basis." Simms testified that he interpreted the letter to mean that Brown possibly would settle the case at that time. He stated, however, that the company would not settle a case until all medical bills were received and reviewed. He further stated that when he received the second letter, he noted that Brown was not an attorney; that he failed to pick that up on Brown's first letter because it came in just like any other letter from an attorney's office, the letterhead looked like any other attorney's letterhead, and he failed to notice it did not say attorney on it. Simms then contacted his claims manager about how to proceed and subsequently wrote Brown that he could

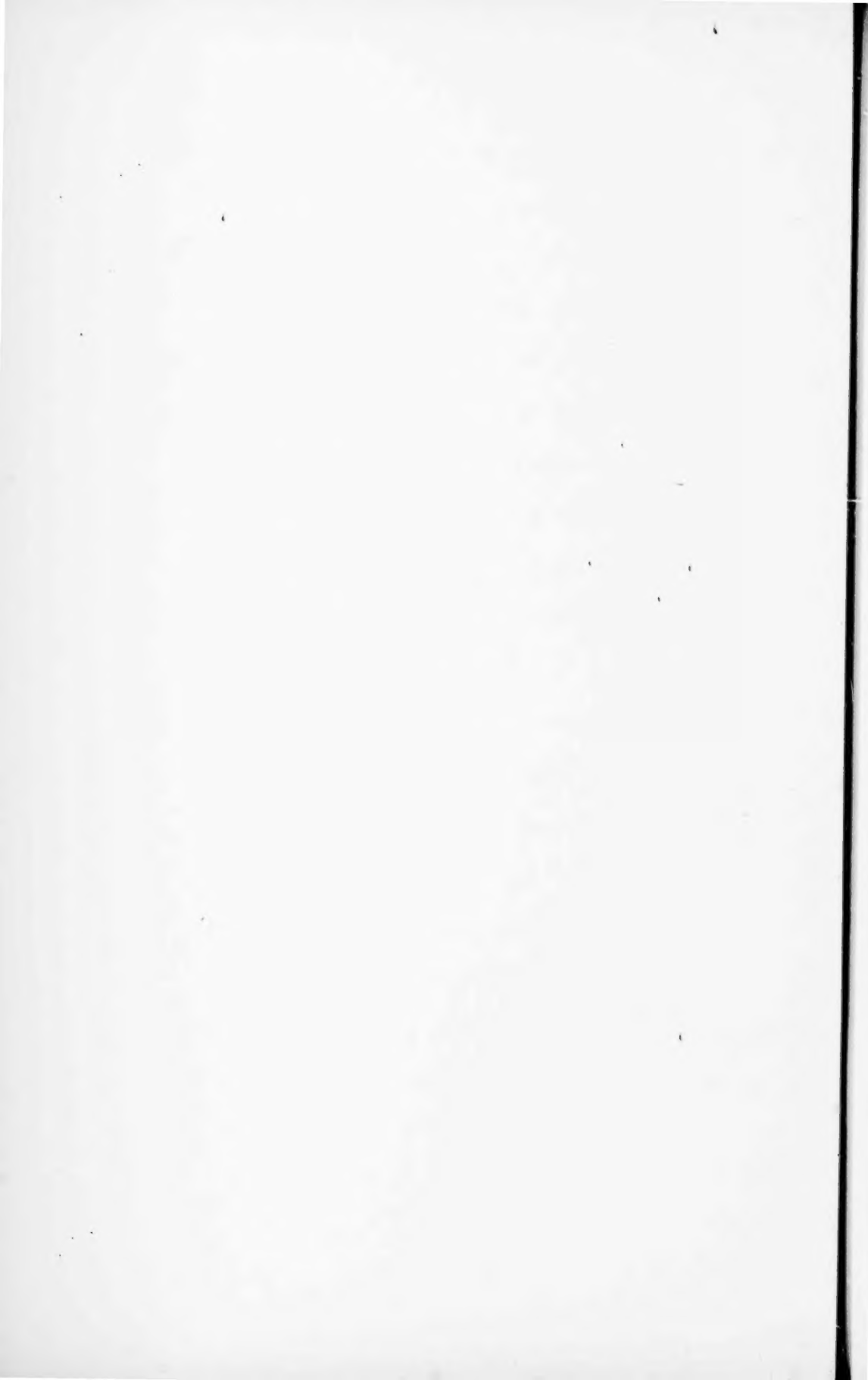
not negotiate the claim with Brown because he was not an attorney. Simms also acknowledged that Brown never represented himself to Simms as an attorney; that he presumed Brown was an attorney; that the facts of the accident, what happened, and basic background information about the incident that Brown presented in his first letter were essentially the same as the information provided by the company's insured; and that the issue of liability was never in dispute between them. Simms further testified that he and Brown never negotiated regarding settlement of the claim and no offers were made by either of them.

Simms also testified that an adjuster is licensed by the state; that



to get a license one must take a training course and pass a test; and that the license allows an adjuster to adjust claims and make settlements concerning monetary value on behalf of his employer; that if a legal question arises he can consult both house counsel and outside counsel employed by the company; and that no legal question arose in his dealings with Brown requiring assistance of an attorney.

Only one of Brown's clients, Gloria Nicely, testified at trial. Her testimony reveals that she was a passenger in a car involved in an accident; that she was injured in the accident; that the driver, Brown's brother-in-law, told her Brown was an attorney and recommended Brown to her;



she went to his office "looking to hire an attorney" and thought she hired one because Brown did not tell her he was not an attorney. She told Brown what had happened and he said he could handle the claim and would contact the insurance agent and the lady in the other car involved in the accident; that she filled out a contract with Brown in which he was to get one-third of what she got.

ARGUMENTS

In Brown's eighth point of error, he contends that the trial court erred as a matter of law in denying his request for findings of fact and conclusions of law. Because the trial court incorporated its findings of fact and conclusions of law within the judgment, this point of error is moot. In a nonjury trial, the



findings and conclusions are normally placed in a separate instrument filed after a formal request by a party; however, when the trial court incorporates findings and conclusions into the judgment -- even when no party requested them -- they shall be treated as findings and conclusions filed in accordance with rule 296 of the Texas Rules of Civil Procedure. Humble Exploration Co. v. Fairway Land Co., 641 S.W.2d 934 (Tex. App. -- Dallas 1982, writ ref'd n.r.e.).

In Brown's first six points of error, he attacks (1) the trial court's declaration that the six listed activities constitute the practice of law, (2) the trial court's finding that he engaged in three of those activities, and (3) the trial court's granting a



permanent injunction against him. The trial court found that Brown engaged in the following activities:

(a) contracting with persons to represent them with regard to their personal causes of action for property damages and/or personal injury;

(b) advising persons as to their rights and the advisability of making claims for personal injuries and/or property damages;

(c) advising persons as to whether to accept an offered sum of money in settlement of claims for personal injuries and/or property damages;

(d) entering into contracts with individuals to represent them in their personal injury and/or property damage matters on a contingent fee together with an attempted assignment of a portion of the person's cause of action to the defendant;



(e) entering into contracts with third persons which purport to grant to the defendant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding; and

(f) advising "clients" of their rights, duties, and privileges under the laws.

Brown does not attack the trial court's findings that he engaged in the activities described in (a), (d), and (e) above, all of which describe the nature of the contracts he entered into with individuals regarding their claims for personal injury and/or property damage arising from automobile accidents.



However, in his second, third, and fourth points, Brown contends that the trial court erred in finding that he engaged in the activities described in (b), (c), and (f) above because there is no evidence or insufficient evidence to support those findings.

When determining a no-evidence point of error, appellate courts must consider only the evidence and inferences that support the fact findings and disregard all evidence and inferences to the contrary. McKnight v. Hill

Exterminators, Inc., 689 S.W.2d 206 (Tex. 1985). When addressing insufficient evidence points, appellate courts consider all of the evidence in order to determine whether the evidence supporting the finding is so weak, or the evidence



to the contrary so overwhelming, that the finding should be set aside and a new trial ordered. Anderson v. Havins, 595 S.W.2d 147, 156 (Tex. Civ. App. -- Amarillo 1980, writ dismissed w.o.j.).

Brown correctly argues that the record nowhere reveals any evidence of one of his clients directly testifying, "Ron Brown advised me of my rights and of the advisability of making a claim," or "Ron Brown advised me as to whether to accept an offered sum of money in settlement of my claim," or "Ron Brown advised me of my rights, duties, and privileges under the laws." Because there is no direct testimony on those three fact findings, Brown maintains that there is no evidence to support them. For the reasons given below, we disagree with Brown's contention.



A person may confer legal advice not only by word of mouth but also by a course of conduct that encourages litigation and the prosecution of claims. Quarles v. State Bar of Texas, 316 S.W.2d 797, 800, 802, & 804 (Tex. Civ. App. -- Houston 1958), pet. denied for writ of cert. to Supreme Court of Texas, 368 U.S. 986 (1962). We agree with Brown that there is no evidence that he ever verbally told his clients their rights. This may be due to the fact that Brown, not being an attorney, did not know himself what his client's legal rights were. Brown's course of conduct nevertheless encouraged litigation and the prosecution of claims and, at least implicitly, advised his clients of what he perceived to be their legal rights. Determining the legal liability, the



extent of legally compensable damages, and the legal rights and privileges of personal injury and property damage claimants, by their very nature, require legal skill and knowledge. We now illustrate how Brown's course of conduct provides both legally and factually sufficient evidence to support the trial court's findings of fact.

We first address whether Brown advised persons as to their rights and the advisability of making claims for personal injuries and/or property damages (finding (b)). Brown contends that he merely handled undisputed and uncontested claims and that he never advised clients of their rights or the advisability of making claims because, "When they come to me, they already feel they have a case. When they come to me, they're usually



already involved in an accident, and they know whose [sic] at fault."

Plaintiff's exhibits one, two, five, and ten illustrate that Brown represented Gloria Nicely, Eunice and Norma King, Ellen White, and Zenobia Sanders, respectively. These persons apparently "felt" they had a claim, and the fact that Brown undertook to represent them regarding their claims illustrates that he impliedly advised them that they did indeed have legal rights and that they certainly should make a claim.

Brown emphasizes that he handles only undisputed and uncontested claims. On the issue of liability, this may be so. However, the evidence abundantly shows that Brown negotiated settlements on damages. Ruth Hunter, a claims representative for Members Insurance,



- testified that she negotiated with Brown on perhaps six different claims. Van Simms, a claims supervisor with Fireman's Insurance, testified that Brown wanted to settle Eunice King's damages on an estimated basis, which meant calculating future medical expenses. It is self-evident that if damages are undisputed and uncontested, then negotiation would not be necessary; because the evidence shows that Brown negotiated, at least on damage issues, we cannot agree that Brown handled only undisputed and uncontested cases.

Brown denied negotiating; he contends that he merely processed claims and that his clients determined their own damages and that he merely inserted their figure and thereafter acted as a go-between. However, Brown admitted on



the stand that he instituted a suit against three insurance companies precisely because they refused to negotiate with him. Furthermore, Brown's sworn petition in that case states that he acts "as their agent in ascertaining damages"

Finally, Gloria Nicely testified that when she contracted with Brown, she thought that she had hired an attorney. If Brown did in fact merely act as a go-between, and if he merely asked for the damages his clients asked for, then Brown again was impliedly advising his clients that the damages for which they asked were in fact the only damages to which they were entitled. From the above evidence, we hold that the evidence is both legally and factually sufficient to support the finding that Brown advised

persons as to their rights and the advisability of making claims for personal injuries and/or property claims.

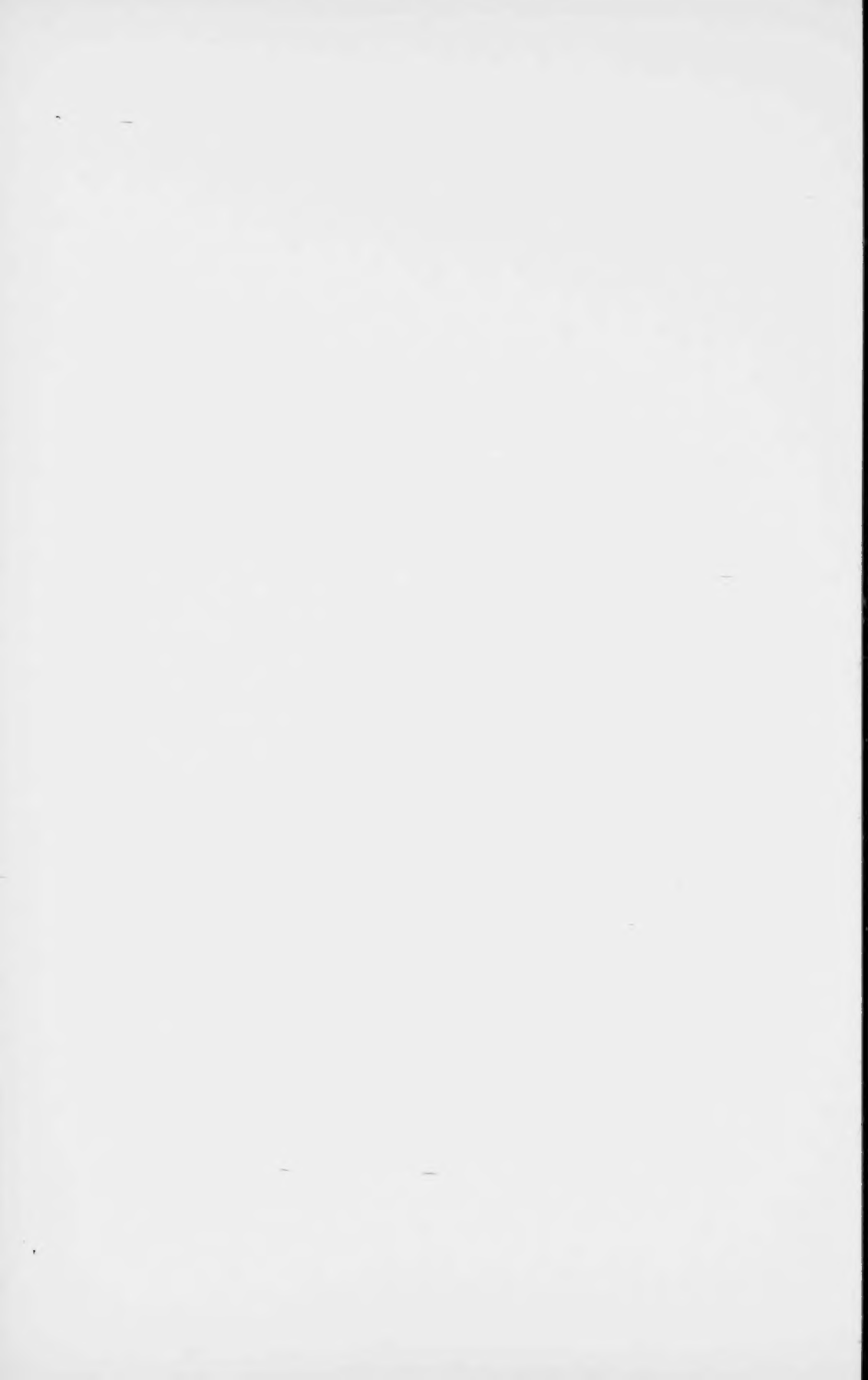
We now address whether Brown advised persons as to whether to accept an offered sum of money in settlement of claims for personal injuries and/or property damages (finding (c)). Brown's contract with White provides that neither he nor she may settle her claim without the other's approval in writing. When Brown approves a settlement he again impliedly advises his client to accept the sum of money offered in settlement. We hold that this evidence is both legally and factually sufficient to support this finding.

The last fact finding we must address is whether Brown advised his clients of their rights, duties, and



privileges under the law (finding (f)). The evidence necessary to support this finding is identical to the evidence necessary to support findings (b) and (c). Because we have held the evidence in support of those findings legally and factually sufficient, we also hold the evidence legally and factually sufficient to support this finding. We overrule points two, three, and four, attacking the trial court's findings that he engaged in the acts under paragraphs (b), (c), and (f).

In Points two, three, and four, Brown also attacks the trial court's conclusions that the activities described in sections (b), (c), and (f) constitute the practice of law. In points one, five, and six, he attacks the trial court's conclusions that the activities



described in (a), (d), and (e) constitute the practice of law. For the reasons given below, we hold that all six sections of the judgment describe activities that constitute the practice of law.

The Legislature has defined the practice of law as follows:

[T]he practice of Law embraces ... the management of the actions ... on behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.



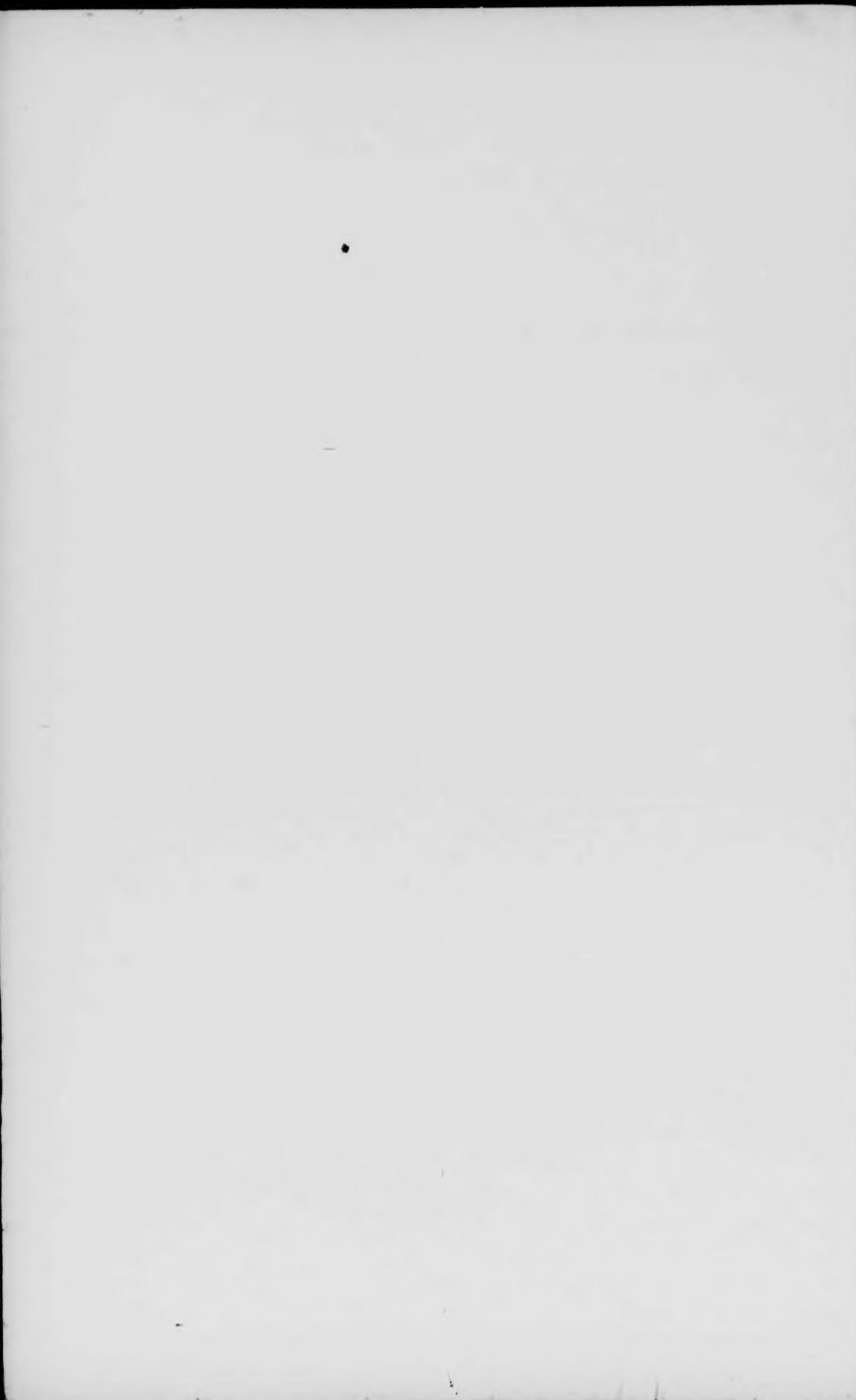
This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

TEX. REV. CIV. STAT. ANN. art. 320A-1, sec. 19(a) (Vernon Supp. 1987). Courts inherently have the power to determine what is the practice of law on a case by case basis, unrestrained by the statutory definition. Unauthorized Practice Committee, State Bar of Texas v. Cortez, 692 S.W.2d 47, 50 (Tex.), cert. denied, 106 S. Ct. 384 (1985).



The practice of law embraces in general all advice to clients and all action taken for them in matters connected with the law. Quarles, 316 S.W.2d at 803. When a person acts for himself or others and undertakes to advise prospective employers or clients by word or course of conduct concerning their legal rights and the prospect of settling personal injury, accident, or other legal claims, thereby encouraging the assertion or prosecution of claims or lawsuits, this person steps beyond the bounds of a legitimate investigation of the facts and engages in the unauthorized practice of law. id. at 800, 802-03.

The controlling purpose of all laws, rules, and decisions forbidding unlicensed persons to practice law is to



protect the public against persons inexperienced and unlearned in legal matters from attempting to perform legal services. Grievance Committee State Bar of Texas, Twenty-First Congressional District v. Coryell, 190 S.W.2d 130, 131 (Tex. Civ. App. -- Austin 1945, writ ref'd w.o.m.). The objective is to protect the public against injury from acts or services, professional in nature, deemed by both the legislature and the courts to be the practice of law, done or performed by those not deemed by law to be qualified to perform them. Grievance Committee of State Bar of Texas, Twenty-First Congressional District v. Dean, 190 S.W.2d 126, 129 (Tex. Civ. App. -- Austin 1945, no writ). The character of the service and its relation to the

public interest determines whether services performed by a layman constitute the practice of law. Id.

Contracting with persons to represent them with regard to their personal causes of action for property damages and/or personal injury constitutes the practice of law.

Quarles, 316 S.W.2d at 801 & 804; cf.

Davies v. Unauthorized Practice Committee

of State Bar of Texas, 431 S.W.2d 590,

594 (Tex. Civ. App. -- Tyler 1968, writ
ref'd n.r.e.) (acting in representative

capacity in the presentation of claims).

Advising persons as to their rights and the advisability of making claims for personal injuries and/or property damages constitutes the practice of law. See

Quarles, 316 S.W.2d at 800 & 804.

Advising persons as to whether to accept an offered sum of money in settlement of claims for personal injuries and/or property damages entails the practice of law. Cf. Stewart Abstract Co. v. Judicial Commission, 131 S.W.2d 686, 689 (Tex. Civ. App. -- Beaumont 1939, no writ) (all advice to clients connected with the law). Entering into contracts with persons to represent them in their personal injury and/or property damage matters on a contingent fee together with an attempted assignment of a portion of the person's cause of action involves the practice of law. Quarles, 316 S.W.2d at 800-01 & 803. Entering into contracts with third persons which purport to grant the exclusive right to select and retain legal counsel to represent the individual

in any legal proceeding constitutes the practice of law. Cf. id. at 804 (peddling and offering to attorneys legal business of claimants). Advising "clients" of their rights, duties, and privileges under the laws entails the practice of law. Id. at 802.

Brown argues that the Texas Insurance Code authorizes persons such as himself to handle undisputed and uncontested claims and claims arising under life, accident, and health insurance policies, provided the person merely performs clerical duties and does not negotiate with the other parties on the disputed and contested claims. TEX. INS. CODE ANN. art. 21.07-4, sec. 1(b) (5) & (6) (Vernon Supp. 1987).



We conclude that Brown's reliance on this statute is misplaced for the following reasons. First, Brown has not been enjoined from performing clerical duties and there is no contention that purely clerical duties, such as recording a client's responses to questions on a form, is the unauthorized practice of law. Second, we disagree with Brown that the evidence shows that he only handled undisputed and uncontested claims. Brown apparently believes that if the issue of liability is uncontested, that the claim is undisputed and uncontested. A claim or cause of action for personal injury and/or property damage also involves the issue of damages, and as long as the damage issue is unresolved, the claim is a disputed and contested claim. There is



ample proof in this record that Brown negotiated the amount of damages to be paid on behalf of parties other than himself. This activity required the use of legal skill and knowledge and, thus, constituted the practice of law. Cortez, 692 S.W.2d at 50. Consequently, we hold that Brown's course of conduct does not fall within the activities authorized under article 21.07-4, section (b) (5) and (6) of the Texas Insurance Code. Brown's first six points of error are overruled.

Brown contends in his seventh point of error that the trial court erred in its findings, declarations, and issuance of a permanent injunction in that to do so constitutes a denial of equal protection of the laws pursuant to the



Fourteenth Amendment of the United States Constitution. Brown argues that he does no more, if not less, than claim adjusters and managers of insurance companies. Brown contends that to allow them to perform their acts but to deny him these same opportunities amounts to a denial of his right to equal protection of the laws. He emphasizes that the controlling element is the act and not the person who does the act; consequently, if claim adjusters may do these acts, he may do these acts. For authority, Brown relies upon Liberty Mutual Insurance Co. v. Jones, 344 Mo. 932, 130 S.W.2d 945 (1939) (in banc).



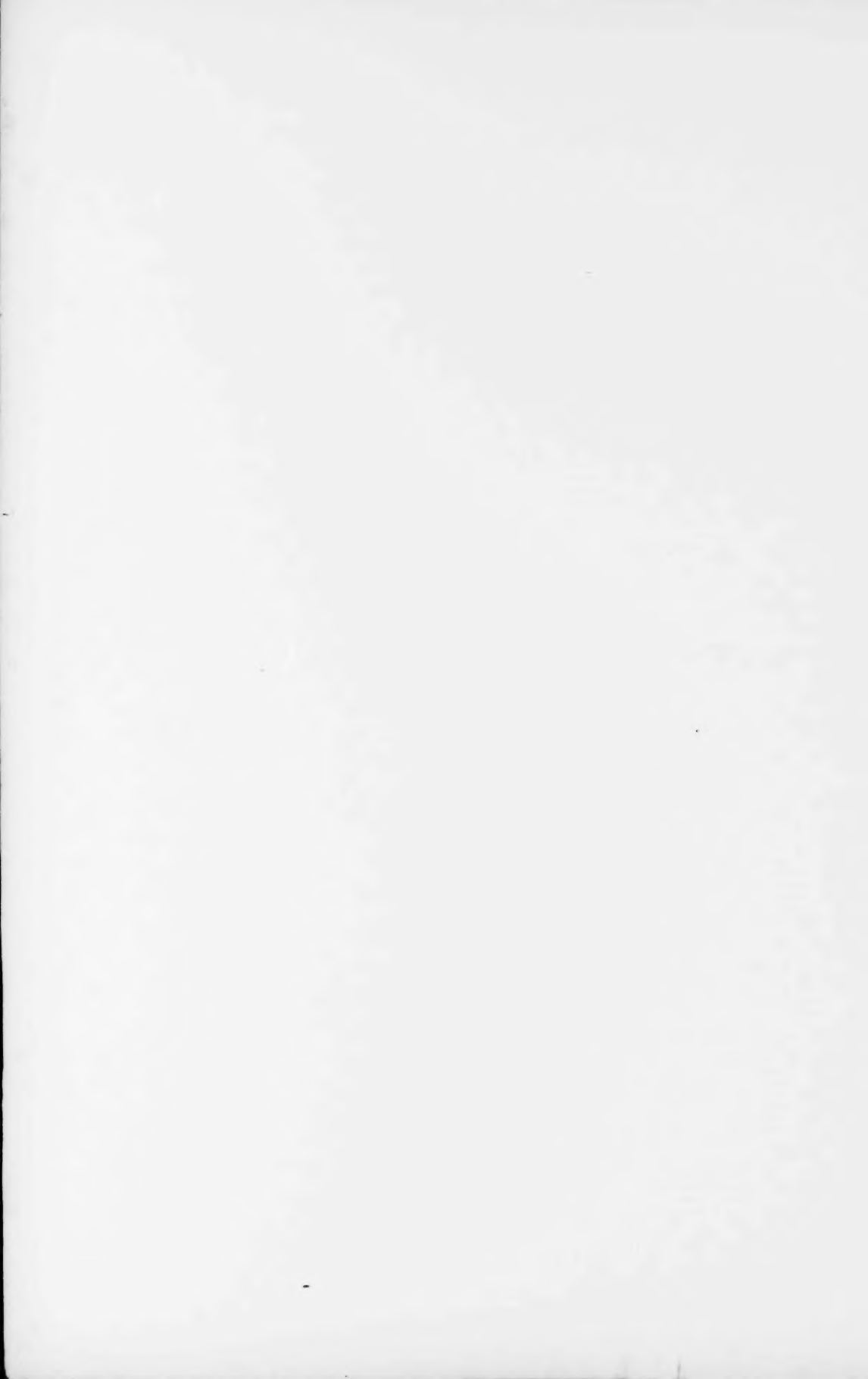
The Supreme Court of Missouri in Liberty Mutual stated that the laws of that state provide for claim adjusters, that the adjusters have to be licensed by the state, that the adjusters are subject to disciplinary legislation, and that adjusters are to perform their services under the advice and supervision of counsel. Liberty Mutual Insurance Co. v. Jones, 130 S.W.2d at 955, 961-62. Brown has not pointed to any legislation authorizing his conduct, he is not licensed by the State, he is not subject to disciplinary action, and he acts independent of the advice and supervision of counsel. This authority does not aid Brown's position.

Furthermore, we are not persuaded that Brown's acts and services are the



same as adjusters' acts and services.

"Adjuster" means any person who ... investigates or adjusts losses on behalf of ... any person who supervises the handling of claims." TEX. INS. CODE ANN. art. 21.07-4 1(a) (Vernon Supp. 1987). Because Brown handles claims himself on behalf of persons asserting claims and because he does not investigate or adjust losses on behalf of someone who is handling claims, Brown does not meet the definition of an adjuster and is not, therefore, performing the same acts or services as an adjuster. Brown's seventh point of error is overruled.



Because all of the bases upon which Brown attacks the trial court's judgment have failed, we affirm the issuance of the permanent injunction.

The judgment of the trial court is affirmed.

ANNETTE STEWART
JUSTICE

PUBLISH
TEX. R. APP. P. 90
87-00223. F



NO. 86-8566-H

UNAUTHORIZED PRACTICE	)	IN THE DISTRICT
OF LAW COMMITTEE,	)	COURT
STATE BAR OF TEXAS,)	
)	
VS.	)	DALLAS COUNTY,
	)	TEXAS
RON BROWN and RON)	
BROWN & ASSOCIATES,)	
	)	160TH JUDICIAL
Defendants.	)	DISTRICT

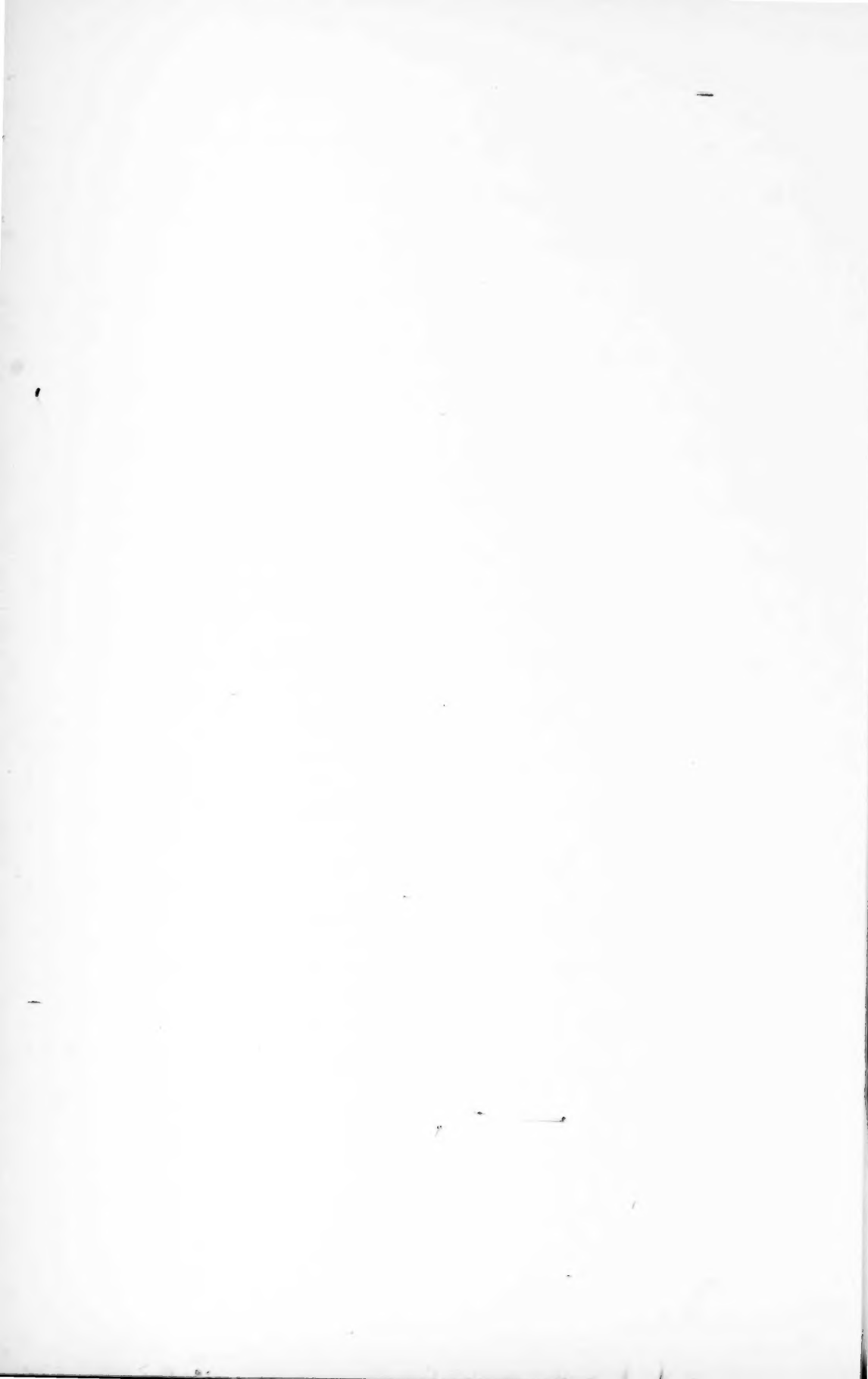
FINAL JUDGMENT

BE IT REMEMBERED that on the 14th day of November, 1986, came on to be heard the above numbered and entitled cause and came the Plaintiff, by and through its attorney of record, and came

APP. D-1



the Defendant pro se and announced to the Court that they had reached an agreement and the parties agreed and stipulated in open Court that this cause would be decided on its merits by the Court and that the evidence heard by the Court on the trial on temporary injunction commencing on the 25th day of July, 1986, and all papers on file in this cause is all of the evidence in the above numbered and entitled cause and such evidence would be the same evidence offered at a trial on the merits and it further being agreed and stipulated that should the Plaintiff be entitled to a sum as an attorneys fee the sum of \$5,000. would be a reasonable fee, the Court proceeded to review the evidence at the temporary injunction hearing as well as Plaintiff's



interrogatories to Defendant and responses thereto and Plaintiff's request for production of documents to Defendant and the responses thereto and finds that the Plaintiff is entitled to declaratory relief and a declaration that the acts or practices of Ron Brown of which Plaintiff complains constitutes the practice of law and it being undisputed that Ron Brown is not now nor has he ever been an attorney duly licensed to practice law in the State of Texas, the Plaintiff has demonstrated its entitlement to injunctive relief. Further, pursuant to the TEX. CIV. REM. Code sec. 37.010, the Court finds Plaintiff is entitled to the stipulated sum as a reasonable attorneys fee and that judgment should be entered accordingly. It is therefore,



ORDERED, ADJUDGED AND DECREED that
Unauthorized Practice of Law Committee,
State Bar of Texas, Plaintiff herein, is
entitled to judgment of and from
Defendant Ron Brown and Ron Brown &
Associates for a declaratory judgment and
this Court does hereby declare that:

- a. Contracting with persons to
represent them with regard
to their personal cause of
actions for property damage
and/or personal injury;
- b. Advising persons as to
their rights and the
advisability of making
claims for personal injuries
and/or property damages;



- c. Advising persons as to whether or not to accept an offered sum of money in settlement of claims for personal injuries and/or property damage;
- d. In entering into contracts with individuals to represent them in their personal injury and/or property damage matters on a contingent fee coupled with an attempted assignment of a portion of such person's cause of action to the Defendants;
- e. In entering into contracts with third persons which purport to grant to Defendant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding;
- f. In advising "clients" their rights, duties and privileges under the law;



constitute acts or practices which constitute the practice of law. Further, the Court finds that the Defendant Ron Brown has engaged in these acts and practices and that Plaintiff has demonstrated their right to permanent injunctive relief. It is therefore,

ORDERED, ADJUDGED AND DECREED that Ron Brown and Ron Brown & Associates are hereby permanently and perpetually enjoined from:

- a. Contracting with persons to represent them with regard to their personal cause of action for property damage and/or personal injury;
- b. Advising persons as to their rights and the advisability of making claims for personal injuries and/or property damages;



- c. Advising persons as to whether or not to accept an offered sum of money in settlement of claims for personal injuries and/or property damage;
- d. In entering into contracts with individuals to represent them in their personal injury and/or property damage matters on a contingent fee coupled with an attempted assignment of a portion of such person's cause of action to the Defendants;
- e. In entering into contracts with third persons which purport to grant to Defendant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding;
- f. In advising "clients" their rights, duties and privileges under the law.



It is further,

ORDERED, ADJUDGED AND DECREED that Plaintiff herein for use and benefit of their attorney of record, Bertran T. Bader III, have judgment of and from Ron brown for the sum of \$5,000. as a reasonable attorneys fee. It is further,

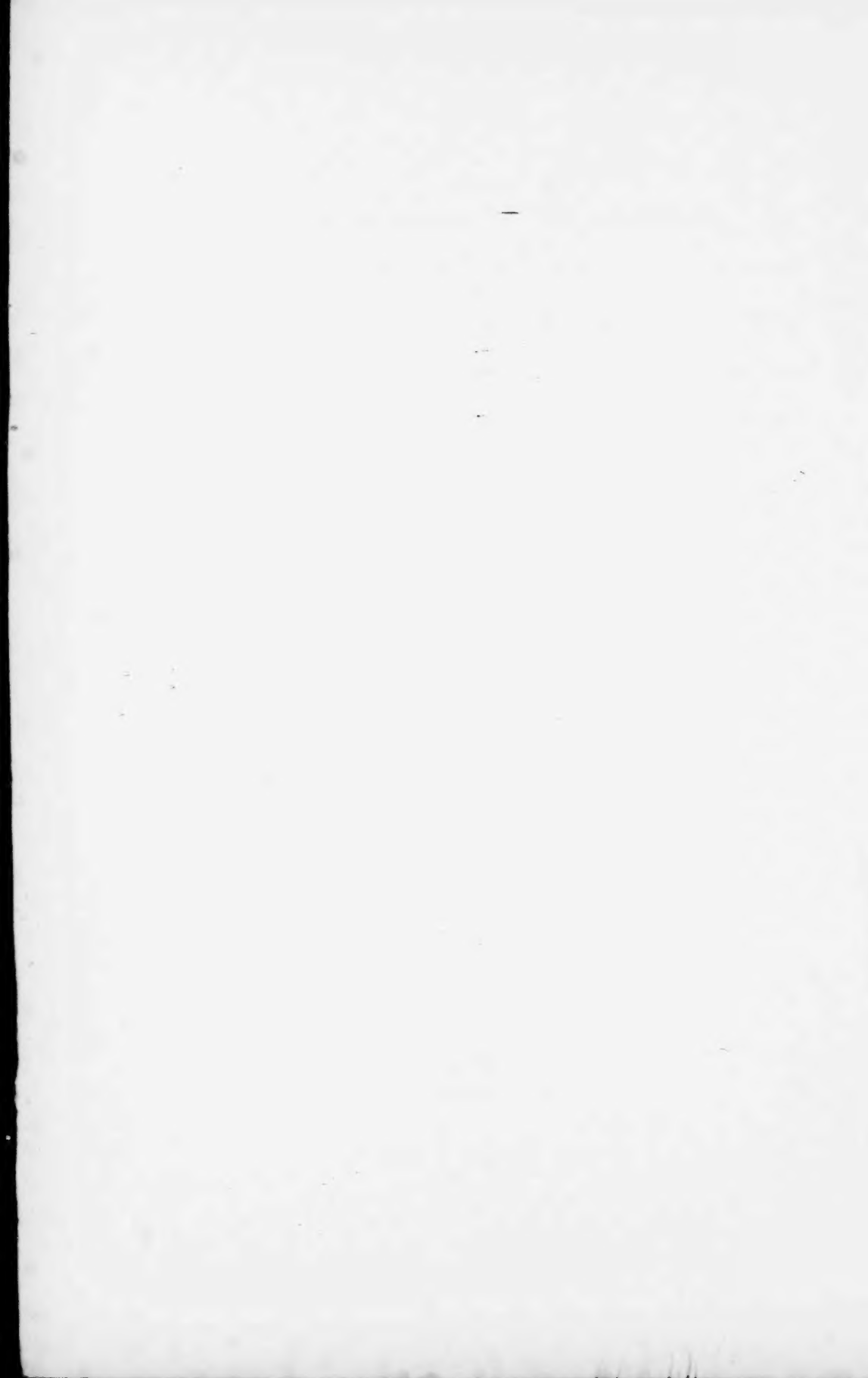
ORDERED, ADJUDGED AND DECREED that all relief not granted herein is specifically denied.

All costs of Court are hereby taxed against Ron Brown and Ron Brown & Associates, for all of which let execution issue if not timely paid.

SIGNED the 26th day of November,
1986.

LEONARD E. HOFFMAN, JR.
JUDGE

APP. D-8



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RON BROWN, ET AL.,)	
)	
Plaintiffs,)	
)	
VS.	)	CIVIL ACTION NO.
)	
VIAL, HAMILTON, KOCH	)	CA 3-87-2654-G
& KNOX, ET AL.,)	
)	
Defendants.)	

ORDER

All discovery shall be completed by
July 31, 1989. Trial is set for
September 5, 1989. 1

SO ORDERED.

April 15, 198.

A. JOE FISH
U.S. District Judge

APP. E-1



1 Should the parties wish an earlier trial setting, they might consider consenting to trial before a United States Magistrate. By agreeing to proceed before a Magistrate, an earlier trial may be obtained. Additionally, the Magistrate is generally able to give settings that are not only earlier but also for an exact date, if that is important to the parties and witnesses -- hereby making it unnecessary for the parties and witnesses to remain ready for trial during the entire period of the court's monthly docket, waiting for this case to be reached (after criminal trials and older civil cases).

The required consent form, requiring the signatures of both parties if such a trial is agreed to, is attached to this order for the parties' consideration and possible implementation.

3
No. 89-227

Supreme Court, U.S.

FILED

SEP 6 1989

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

RON BROWN, ET AL.,

Petitioners,

v.

VIAL, HAMILTON, KOCH & KNOX, ET AL.,

Respondents.

*On Petition for Writ of Certiorari To The
United States Court of Appeals
For the Fifth Circuit*

BRIEF IN OPPOSITION

JAMES E. COLEMAN, JR.
COUNSEL OF RECORD
THERESA A. COUCH
CARRINGTON, COLEMAN,
SLOMAN & BLUMENTHAL
200 Crescent Court
Suite 1500
Dallas, Texas 75201
(214) 855-3000

Counsel for Respondents

18P

QUESTIONS PRESENTED

1. Did the Court of Appeals review the District Court's dismissal of Petitioners' federal claims consistently with the law of the other circuits?
2. Did the Court of Appeals correctly conclude the lower court's ruling that Petitioners did not have standing to assert a private antitrust claim was consistent with the law of the other circuits?
3. Did the Court of Appeals correctly conclude that Brown's allegations that the State Court proceeding was a "sham" judgment did not sufficiently raise a factual issue that would preclude summary judgment?
4. Did the Court of Appeals correctly conclude that Petitioners do not raise an equal protection claim?
5. Did the Court of Appeals correctly conclude that Petitioners do not raise a due process claim?

LIST OF PARTIES

1. Ron Brown
Ron Brown & Associates
2. Vial, Hamilton, Koch & Knox
Byron L. Falk
Touchstone, Bernays, Johnston, Beall & Smith
Wade C. Smith
Sidney H. Davis, Jr.
Passman, Jones, Andrews & Holley
Shannon Jones, Jr.
Johnson, Bromberg & Leeds
Robert R. Roby
Robert W. Hartson, Inc.
Robert W. Hartson
State Unauthorized Practice of Law Committee,
State Bar of Texas
Jim Bloom a/k/a "James D. Blume"
State Farm Mutual Automobile Insurance Co.
Harlan D. Holiner
Donovan Elliott
Ohio Casualty Insurance Co.
Trelby Edwards
Dick Gallatin
Fireman's Fund Insurance Co.
Ron Watson
Van Sims
Members Insurance Group
Ruth Hunter
Leonard Adkins

TABLE OF CONTENTS

	<u>Page</u>
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	2
A. The Course of Proceedings and Disposition in the Federal Courts	2
B. The Course of Proceedings in the State Courts	3
OBJECTIONS TO WRIT	4
REASONS FOR DENYING WRIT	5
SUMMARY OF ARGUMENT	5
ARGUMENT	6
I. A State Acting as a Sovereign Has the Power to Place Restraints on the Practice of Law...	6
A. There is No Conflict Among the States ..	6
B. There is No Equal Protection Violation ..	8
C. The Texas Courts' Exertion of Jurisdiction Over Petitioners Did Not Exceed the Limits of Due Process	9
II. The Summary Judgment and Dismissal Entered by the District Court and Affirmed by the Court of Appeals is Correct	10
A. The Fifth Circuit Correctly Applied the Law in Determining That Petitioners Did Not Have Standing to Bring an Antitrust Claim and Did Not Raise Any Violation of Any Existing Constitutional Right	10
B. There is No Conflict in the Circuits	11
III. The Rulings of the Courts Below were Correct	12
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

Page

<i>Bates v. State Bar of Arizona</i> , 433 U.S. 350 (1977)	
<i>Brown v. Unauthorized Practice of Law Committee</i> , 742 S.W.2d 34 (Tex. App. — Dallas 1987, writ ref'd)	
<i>Eastern Railroad Conference v. Noerr Motor Freight, Inc.</i> , 365 U.S. 127 (1961)	
<i>Goodman v. Beall</i> , 130 Ohio St. 427, 200 N.E. 470 (Ohio 1936)	
<i>Guajardo v. Luna</i> , 432 F.2d 1324, (5th Cir. 1970)	
<i>Liberty Mutual Insurance Company v. Jones</i> , 130 S.W. 945 (Mo. 1938)	
<i>Lindstrom v. State of Illinois</i> , 632 F. Supp. 1535 (N.D. Ill. 1986), <i>appeal dismissed</i> , 828 F.2d 21 (7th Cir. 1987)	
<i>Novak v. Beto</i> , 320 F. Supp. 1206, (S.D. Tex. 1970), <i>aff'd in part, reversed in part</i> 453 F.2d 661 (5th Cir. 1971) <i>cert. denied</i> , 409 U.S. 968 (1972) ...	
<i>Parker v. Brown</i> , 317 U.S. 341 (1943)	
<i>Pilla v. American Bar Association</i> , 542 F.2d 56 (8th Cir. 1976)	
<i>Taylor v. Montgomery</i> , 539 F.2d 715 (7th Cir. 1976) ..	
<i>Turner v. American Bar Association</i> , 407 F. Supp. 451 (N.D. Tex. 1975), <i>aff'd sub. nom.</i>	
<i>United Mine Workers of America v. Pennington</i> , 381 U.S. 637 (1965)	

Statutes

Tex. Ins. Code Art. 21.07-3, <i>et seq.</i>	
Tex. Ins. Code Art 21.07-4, <i>et seq.</i>	
Tex. Ins. Code Art. 21.07-4 §1(a) (Vernon 1981)	

Rules

Sup. Ct. R. 17	
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NO. 89-227

IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

RON BROWN, ET AL.,

Petitioners,

v.

VIAL, HAMILTON, KOCH & KNOX, ET AL.,

Respondents.

*On Petition for Writ of Certiorari To The
United States Court of Appeals
For the Fifth Circuit*

BRIEF IN OPPOSITION

Respondents Vial, Hamilton, Koch & Knox, Byron L. Falk, Touchstone, Bernays, Johnston, Beall & Smith, Wade C. Smith, Sidney H. Davis, Jr., Passman, Jones, Andrews & Holley, Shannon Jones, Jr., Johnson, Bromberg & Leeds, Robert R. Roby, Robert W. Hartson, Inc., Robert W. Hartson, State Farm Mutual Automobile Insurance Co., Harlan D. Holiner, Donovan Elliott, Ohio Casualty Insurance Co., Trelby Edwards, Dick Gallatin, Fireman's Fund Insurance Co., Ron Watson, Van Sims respectfully request that the petition for writ of certiorari be denied.

STATEMENT OF THE CASE

A. The Course of Proceedings and Disposition in the Federal Courts

On November 9, 1987, Ron Brown and Ron Brown & Associates (collectively referred to as "Brown") filed a complaint in the United States District Court for the Northern District of Texas, Dallas Division, alleging violations of the Sherman Act (15 U.S.C. §1, *et seq.*), violations of the First, Fifth and Fourteenth Amendments of the United States Constitution, libel, slander and tortious interference with contracts. All of the defendants, including these Respondents Vial, Hamilton, Koch & Knox, Byron L. Falk, Touchstone, Bernays, Johnston, Beall & Smith, Wade C. Smith, Sidney H. Davis, Jr., Passman, Jones, Andrews & Holley, Shannon Jones, Jr., Johnson, Bromberg & Leeds, Robert R. Roby, Robert W. Hartson, Inc., Robert W. Hartson, State Farm Mutual Automobile Insurance Co., Harlan D. Holiner, Donovan Elliott, Ohio Casualty Insurance Co., Trelby Edwards, Dick Gallatin, Fireman's Fund Insurance Co., Ron Watson, Van Sims, filed motions for dismissal or for summary judgment and sanctions. After considering the pleadings, briefs and other documents submitted by all parties, the District Court entered a Memorandum Order and Judgment on May 12, 1988, granting the defendants' motions to dismiss and motions for summary judgment and denying their motions for sanctions. Brown appealed that final judgment to the Court of Appeals for the Fifth Circuit. On April 18, 1989, the Court of Appeals affirmed the District Court ruling granting summary judgment on the federal claims and dismissing the state claims. On May 12, 1989, the Court of Appeals denied Brown's petition for rehearing.

B. The Course of Proceedings in the State Courts

Prior to the filing of the federal court action, the State Unauthorized Practice of Law Committee (the "State Committee") sought an injunction against Brown in the 160th District Court of Dallas County, Texas in Cause No. 86-8566-H. On November 26, 1986, the 160th Judicial District Court entered judgment that Brown had engaged in the unauthorized practice of law and Brown was permanently enjoined from his illegal activities. These illegal activities included advising clients on the settlement of insurance claims. The injunction against Brown was affirmed on appeal, *Brown v. Unauthorized Practice of Law Committee*, 742 S.W.2d 34 (Tex. App. — Dallas 1987, writ ref'd). During the pendency of the suit in the 160th Judicial District Court, Brown filed suit against various insurance companies and insurance company employees for violations of his constitutional rights and for libel. The defendants named by Brown in the state court suit are among the defendants in the federal case. On January 6, 1987, a summary judgment was entered on behalf of all the defendants in Brown's state court action. Brown appealed the summary judgment to the Dallas Court of Appeals. On March 18, 1988, the Dallas Court of Appeals affirmed the judgment in an unpublished opinion.

After unsuccessfully litigating with the State Committee over specific activities determined to be the unauthorized practice of law and unsuccessfully litigating with certain insurance companies, individual employees of insurance companies and the State Committee on claims of libel and constitutional violations, Brown filed suit in federal court seeking reconsideration of many of the same issues as in the two state court lawsuits. The federal court action named all of the state court partici-

pants as defendants as well as additional defendants. The claims in the federal court centered around alleged antitrust violations and various constitutional claims.

OBJECTIONS TO WRIT

A review on writ of certiorari is a matter of judicial discretion, not a matter of right. The rules of this Court state that a review on writ of certiorari will be granted "only when there are special and important reasons." Sup. Ct. R. 17 (1989). Among the reasons for granting review on writ of certiorari are the following: (1) when a federal court of appeals has rendered a decision in conflict with another federal court of appeals on the same matter or has decided a federal question in a way to conflict with a state court of last resort; (2) when a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort; and (3) when a state court or a federal court of appeals has decided an important question of federal law which has not been and should be settled by this Court. *Id.* None of those circumstances exist in this case. Petitioners attempt to raise the questions in such a way as to suggest that the federal court of appeals decision is in conflict with the decisions of state courts of last resort or that the federal court of appeals decision is in conflict with the decision of a court of appeals in another circuit. Neither is true here. Indeed, the decision in the court of appeals is consistent with the law of other circuits and consistent with the decisions of the various state courts of last resort.

REASONS FOR DENYING WRIT

SUMMARY OF ARGUMENT

The Fifth Circuit's affirmance of the summary judgment and dismissal of Petitioners' claims neither conflicted with the decisions of other circuits nor misapplied the law. The decision, followed the established principles that the integrity of the Bar is a public concern and a state should not be deterred or diverted from disciplinary proceedings by interference from a federal court. The Court of Appeals correctly held that certain of Petitioners' activities had been determined by the state courts to be the unauthorized practice of law and thus the judgment in the state courts could not be attacked in the federal court proceeding.

The Court of Appeals correctly held that Petitioners did not have standing to assert antitrust claims because they did not seek to protect a legally cognizable business from injury. Petitioners unsuccessfully attempted to argue that the state court judgment was a "sham" judgment.

Petitioners unsuccessfully attempted to create an equal protection argument out of the action by the state to protect the integrity of the Bar and ultimately to protect the citizens of the state from the unauthorized practice of law. The Court of Appeals correctly held that there was no equal protection violation.

ARGUMENT

I. A STATE ACTING AS A SOVEREIGN HAS THE POWER TO PLACE RESTRAINTS ON THE PRACTICE OF LAW.

Petitioners phrase their issues in an attempt to create an argument that the decisions by the Texas courts are in conflict with other state courts of last resort on the application of the equal protection clause to the adjustment of personal injury or property claims. Although Petitioners purport to bring this as a petition for writ of certiorari on the affirmance by the Court of Appeals for the Fifth Circuit, they also attempt to complain about the Texas Supreme Court decision not to review the lower state court decisions in the related cases. Petitioners argue that the Court of Appeals should have vacated the state court judgments that identified certain of Petitioners' activities as constituting the unauthorized practice of law.

A state acting as a sovereign has the authority to regulate the legal profession. The restrictions placed on the legal profession are compelled by the directions of the state acting as a sovereign. *Bates v. State Bar of Arizona*, 433 U.S. 330, 359-60 and n. 11 (1977). The Texas courts determined that certain of Petitioners' activities constitute the unauthorized practice of law and enjoined Petitioners from engaging in those specific activities.

A. There is No Conflict Among the States

Petitioners erroneously argue that the highest courts in Ohio and Missouri have reached decisions contrary to that of the Texas courts. Petitioners initially argue that the Ohio Supreme Court has reached a contrary decision from that reached by the Texas courts. Petitioners'

reliance on *Goodman v. Beall*, 130 Ohio St. 427, 200 N.E. 470, 471-473 (Ohio 1936) is misplaced. In the *Goodman* case the Ohio court held that a lay person may assist another in the submission of claims and appear as a representative at proceedings until the claim is first denied. This limited role recognized by the Ohio court differs significantly from the activities prohibited by the Texas courts. The Texas courts specifically carved out those activities that necessarily constitute the unauthorized practice of law. These activities center on offering advice in negotiating the payment of monies in settlement of claims, not merely clerical functions involved in making claims.

Petitioners further rely on *Liberty Mutual Insurance Company v. Jones*, 130 S.W. 945, 961-962 (Mo. 1938) for the proposition that Petitioners can engage in the activities the Texas court precluded. Petitioners' reliance on *Liberty Mutual* is also misplaced. The Missouri court in *Liberty Mutual* also limited the activities in which a lay person may engage. The activities were limited by the Missouri court in much the same way as Petitioners' activities were limited by the Texas courts. Petitioners attempted to negotiate settlements of claims, not simply assist a claimant in the submission of a claim. In negotiating a settlement on behalf of a citizen, the lay representative must necessarily be involved to some extent in a question of legal liability. It is that activity that is precluded by all of the cases cited by Petitioners as well as by the Texas courts in Petitioners' case. The court in *Liberty Mutual* only permitted a lay person to be involved in attempting to adjust *undisputed* claims. Petitioners do not limit their activities in such a manner. It is Petitioners' failure to limit their activities that caused the Texas court to issue the injunction.

The opinions of the Ohio and Missouri courts support the position of the Texas courts. Both courts agreed that a lay person is limited in the extent of his involvement in an insurance claim. He may participate to the extent of helping with routine clerical functions to submit a claim and he may represent an individual before some administrative board only if the claim is undisputed or uncontested.

B. There is No Equal Protection Violation.

Petitioners next argue that there is an equal protection violation because of the Texas statutory provisions governing the regulation of insurance adjusters. Because Petitioner Ron Brown represents that he is a licensed insurance adjuster, he believes he is entitled to perform the activities from which he was enjoined by the state court. Petitioners fail to recognize that the activities from which Brown was enjoined are not the same activities permitted by a licensed insurance adjuster. Additionally, the statutory provision permits a licensed insurance adjuster to "investigate or adjust losses on behalf of either an insurer or a self-insured, or any person who supervises the handling of claims." Tex. Ins. Code Art. 21.07-4 §1(a) (Vernon 1981). The activities from which Petitioners were enjoined differ from those permitted under the statutory scheme. The statute permits a non-attorney to handle undisputed and uncontested claims arising under life, accident and health insurance policies, but does not authorize a non-lawyer to enter into a contingency fee contract with an injured party, to represent that party in negotiations with the insurer or to approve a settlement. As long as some question of the damages incurred is unresolved, the claim is a disputed and contested one.

**C. The Texas Courts' Exertion of Jurisdiction
Over Petitioners Did Not Exceed the Limits of
Due Process.**

Petitioners finally argue that the state courts' assertion of jurisdiction in the injunction litigation exceeds the limits of due process. Petitioners' argument relies on the statutory provision that the administration of the Texas Insurance Code is vested in the State Board of Insurance and injunctions may be brought by the Attorney General. Again Petitioners' reliance on these statutory provisions is misplaced. The statutory provision on which Petitioners rely deals with the Managing General Agents Licensing Act, not the provisions regarding insurance adjusters. Tex. Ins. Code Art. 21.07-3, *et seq.* The provision dealing with licensing of insurance adjusters is found in Tex. Ins. Code Art 21.07-4, *et seq.*

The thrust of Petitioners' argument is that Ron Brown is a licensed insurance adjuster. Therefore, the argument continues, Brown is only subject to, review and administration under the Insurance Code. The fallacy in Petitioners' argument is that the activities from which they were enjoined are not the activities of an insurance adjuster as set forth in the statute. The courts of the State of Texas are vested with the authority to regulate the practice of law. To the extent activities of a purported insurance adjuster violate regulations concerning the practice of law, the Texas courts have jurisdiction to enter rulings on the subject.

II. THE SUMMARY JUDGMENT AND DISMISSAL ENTERED BY THE DISTRICT COURT AND AFFIRMED BY THE COURT OF APPEALS IS CORRECT.

A. The Fifth Circuit Correctly Applied the Law in Determining That Petitioners Did Not Have Standing to Bring an Antitrust Claim and Did Not Raise Any Violation of Any Existing Constitutional Right.

Petitioners argue that Respondents somehow violated the antitrust laws by enjoining Petitioners from certain activities determined to be the unauthorized practice of law. The District Court and the Court of Appeals determined that Petitioners had no standing to raise such a claim. In order to have standing to assert a private antitrust claim a party must claim that a legally cognizable business or property has been injured by the alleged antitrust activity. Because the "business" in which Petitioners engaged was determined to be the unauthorized practice of law, there was no legally cognizable business or property injured by the alleged antitrust violation. *Turner v. American Bar Association*, 407 F. Supp. 451, 479 (N.D. Tex. 1975), *aff'd sub. nom. Pilla v. American Bar Association*, 542 F.2d 56 (8th Cir. 1976) and *Taylor v. Montgomery*, 539 F.2d 715 (7th Cir. 1976) (multi-district litigation). The state court decision found that Petitioners violated Texas law prohibiting the unauthorized practice of law. Petitioners' business is not legally cognizable, and therefore, is not protected by the antitrust laws. The regulatory activities of the states in regard to professional behavior are compelled by the state acting as a sovereign. *Bates v. State Bar of Arizona*, 433 U.S. 350, 359-60 and at n. 11, (1977). Such regulatory activities by a state do not violate the antitrust laws. *See Id.* (citing

Parker v. Brown, 317 U.S. 341 (1943)). Petitioners have been prohibited by the Texas courts from representing clients with disputed liability claims in a manner that constitutes the practice of law. There is no constitutional guarantee that entitles Petitioners, as non-lawyers, to represent other people in litigation. *Guajardo v. Luna*, 432 F.2d 1324, 1325 (5th Cir. 1970). *Novak v. Beto*, 320 F. Supp. 1206, 1210 (S.D. Tex. 1970), *aff'd in part, reversed in part* 453 F.2d 661 (5th Cir. 1971) *cert. denied*, 409 U.S. 968 (1972). State laws prohibiting the unauthorized practice of law do not violate the First, Fifth or Fourteenth Amendments. *Lindstrom v. State of Illinois*, 632 F. Supp. 1535, 1538-39 (N.D. Ill. 1986), *appeal dismissed*, 828 F.2d 21 (7th Cir. 1987)

Petitioners' assertion of the Noerr-Pennington doctrine is inapplicable in this case. See *Eastern Railroad Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) and *United Mine Workers of America v. Pennington*, 381 U.S. 637 (1965). The determination by the Texas courts that Petitioners are not entitled to engage in specific activities means that Petitioners do not have a right to compete. Therefore, the litigation cannot be an integral part of a scheme to destroy competition.

B. There is No Conflict in the Circuits.

Petitioners attempt to argue there is some conflict in the cases, but all of the cases cited are from state courts and deal with what activities are permitted and what activities are prohibited as the unauthorized practice of law. These cases have been discussed above. Petitioners do not cite any conflict in the cases decided by the Courts of Appeal.

III. THE RULINGS OF THE COURTS BELOW WERE CORRECT.

Petitioners next argue that in granting the motion for summary judgment and dismissal the District Court decided an issue of fact. Petitioners erroneously assert that the underlying state court judgment was procured by the very same Respondents as appear here. As discussed above, only some of the Respondents before this Court participated in any way in the state court action. The determination made by the District Court involved only issues of law and no factual issues. The only issues were whether Petitioners could raise a private antitrust claim or a constitutional claim under the First, Fifth or Fourteenth Amendments. As previously addressed, Petitioners do not have standing to assert a private antitrust claim because they do not seek to protect a legally cognizable business. Petitioners only seek to raise an equal protection claim or a due process claim based on the Texas statutory provisions concerning insurance adjusters. The inapplicability of a due process or equal protection claim to these provisions is also addressed above.

CONCLUSION

Throughout their petition, Petitioners attempt to confuse the various Texas court judgments and the judgments of the federal courts. Although the federal court judgments necessarily involve the state court judgments, this petition for writ of certiorari is based on the determination by the federal courts that Petitioners failed to raise either a private antitrust claim or a constitutional claim. Procedurally, Petitioners' petition for writ of certiorari does not arise from the decisions of the Texas courts. Instead, it arises from the judgment of the federal district court and the affirmance of that

judgment by the Court of Appeals for the Fifth Circuit. Petitioners do not raise any issue which needs to be addressed by this Court. There is no conflict between the federal court decision and the decisions of the state courts of last resort. Additionally, there is no conflict between the decisions of the various circuit courts of appeal. Finally, there is no compelling issue requiring a determination by this Court. Moreover, the rulings of the federal district court and the federal court of appeals are correct on the merits as a matter of law. The petition for writ of certiorari should therefore be denied.

Respectfully submitted,

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Casualty Insurance Co., Trelby Edwards, Dick Gallatin,
Fireman's Fund Insurance Co., Ron Watson, Van Sims

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JOSEPH F. SPANIOL, JR.
CLERK

No. 89-227

In The
Supreme Court of the United States
OCTOBER, 1989 TERM

RON BROWN,

Petitioner-Appellant,

v.

VIAL, HAMILTON, KOCH & KNOX, et al.,

Respondents-Appellees

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit
From Case Number 88-1482

**RESPONDENTS MEMBERS INSURANCE GROUP
RUTH HUNTER, LEONARD ADKINS
BRIEF IN RESPONSE TO PETITION FOR
CERTIORARI OF APPELLEES**

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September, 1989

CERTIFICATE OF INTERESTED PARTIES

Pursuant to the provisions of Rule 22, Rule 33 and Rule 34 of the Rules of the Supreme Court, the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

The parties are as follows:

Petitioner-Appellant:

Ron Brown

Respondents-Appellees:

Vial, Hamilton, Koch & Knox

Byron L. Falk

Touchstone, Bernays, Johnston, Beall & Smith

Wade C. Smith

Sidney H. Davis, Jr.

Passman, Jones, Andrews & Holley

Shannon Jones, Jr.

Johnson, Bromberg & Leeds

Robert R. Roby

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State Unauthorized Practice of Law Committee,
State Bar of Texas

Jim Bloom a/k/a "James D. Blume"

State Farm Mutual Automobile Insurance Co.

Harlan D. Holiner

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Trelby Edwards

Dick Gallatin

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Ron Watson

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Members Insurance Group

Ruth Hunter

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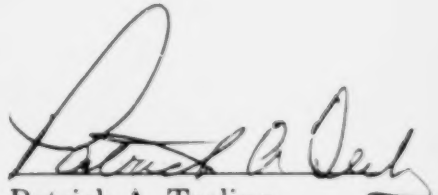
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TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
CERTIFICATE OF INTERESTED PARTIES	i
TABLE OF CONTENTS	iv
TABLE OF CITATIONS	v
STATEMENT OF THE ISSUES	1
ARGUMENT	2
STATEMENT OF THE NATURE OF THIS CASE	3
STATEMENT OF FACTS	3
ARGUMENT AND AUTHORITIES	4
CONCLUSION	7

TABLE OF CITATIONS

I. CASES

<u>CASE</u>	<u>PAGE</u>
<i>Bates vs. State Bar of Arizona</i> , 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977)	5
<i>Hoover v. Ronwin</i> , 466 U.S. 558 (1984)	5
<i>Parker v. Brown</i> , 317 U.S. 341 (1943)	5
<i>Middlesex Ethics Committee v. Garden State Bar Association</i> , 457 U.S. 423 (1982)	6
<i>Pilla v. American Bar Association</i> , 452 F.2d 56 (8th Cir. 1976)	5
<i>Taylor vs. Montgomery</i> , 539 F.2d 715 (7th Cir. 1976)	4
<i>Turner vs. American Bar Association</i> , 407 F. Supp. 451, (N.D. Tex., 1975)	4
<i>Brown vs. Unauthorized Practice of Law Committee</i> , 742 S.W. 2nd 34 (Tex.Civ.App.-Dallas 1987)	4

II. CONSTITUTIONAL PROVISIONS

III. STATUTES



No. 89-227

**In The
Supreme Court of the United States
OCTOBER, 1989 TERM**

RON BROWN,

Petitioner-Appellant,

v.

VIAL, HAMILTON, KOCH & KNOX, et al.,

Respondents-Appellees

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit
From Case Number 88-1482**

**RESPONDENTS MEMBERS INSURANCE GROUP
RUTH HUNTER, LEONARD ADKINS
BRIEF IN RESPONSE TO PETITION FOR
CERTIORARI OF APPELLEES**

**STATEMENT OF THE ISSUES
IN SUPPORT OF DENIAL OF
THE PETITION FOR CERTIORARI**

I.

THE DISTRICT COURT CORRECTLY GRANTED,
AND THE COURT OF APPEALS CORRECTLY
UPHELD, APPELLEES' MOTION FOR DISMISSAL AS
SUPPORTED BY THE EVIDENCE IN RECORD WHICH
ESTABLISHES THAT PETITIONER-APPELLANT
WAS ENGAGED IN AN UNLAWFUL BUSINESS AND
THAT PETITIONER-APPELLANT HAD RECEIVED
DUE PROCESS IN THE STATE DISTRICT AND
APPELLATE COURTS.

II.

THE DISTRICT COURT CORRECTLY GRANTED, AND THE COURT OF APPEALS CORRECTLY UPHELD, APPELLEE'S MOTION FOR DISMISSAL WHICH IS SUPPORTED BY EVIDENCE ATTACHED TO THE MOTION TO DISMISS WHICH ESTABLISHES THAT NONE OF THE APPELLEES VIOLATED THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

III.

THE DISTRICT COURT CORRECTLY DISMISSED, AND THE COURT OF APPEALS CORRECTLY UPHELD, PETITIONER-APPELLANT'S CAUSE OF ACTION BASED UPON FEDERAL AUTHORITY AND DUE PROCESS.

ARGUMENT

Appellee Members Insurance Group, Ruth Hunter and Leonard Adkins (hereinafter referred to as "Respondents") agree that this Honorable Court has the jurisdiction for this appeal from the United States Court of Appeals for the Fifth Circuit based upon the provisions of 28 U.S.C. 1257, but there is no statute in question which is seriously contemplated to be in conflict with the United States Constitution or the treaties and laws of the United States. Therefore, pursuant to the provisions of Rule 16.1(c) of the Rules of the Supreme Court, Respondents urge that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument or review. By decisions reviewing similar situations and cases of unauthorized practice of the law and insurance claims adjusting, this Honorable Court has articulated a clear and unequivocal standard

for Federal Courts and the States to follow in these areas. There is no diversity of opinion in any of the Courts of Appeal on this issue, nor diversity of opinion with any state court. Thus, Brown's Petition for Certiorari is inconsequential and should be denied.

STATEMENT OF THE NATURE OF THE CASE

Appellant Ron Brown (hereinafter "Petitioner" or "Brown") brought this suit against Respondents seeking federal protection of his business activities as an agent or representative in the settlement of personal injury, property and insurance claims. Respondents agree with Petitioner's Statement of the Case in his brief.

This is an appeal from a dismissal by the United States District Court for the Northern District of Texas, the Honorable A. Joe Fish, United States District Judge, presiding, and the upholding of said dismissal by the Court of Appeals for the Fifth Circuit by unpublished opinion by Judge Reavley.

STATEMENT OF FACTS

Petitioner was the Defendant in a suit brought in Texas State Court proceeding brought by the State of Texas for the unauthorized practice of law. The State of Texas prevailed in the proceeding, resulting in a final judgment, prior to the dismissal of the Petitioner's action in the Court below. Petitioner ignores the *Younger* abstention doctrine in his Statement of Facts regarding the issues below.

The Motion to Dismiss filed by Respondents in the United States District Court, below, unlike the other Respondents in this appeal, is supported by Plaintiff's Answers to Interrogatories which were attached to the Motion to Dismiss. This is not to downplay the relevance

nor authority cited by the other Respondents in their briefs, but rather is merely noted to the Court in support of the action taken by the Trial Court and Court of Appeals.

In summary, Respondents disagree with the characterization of the activities and the characterization of the decision by the Texas state courts as a "sham judgment". The activities conducted by Petitioner are violative of statutory law and the unauthorized practice of law in the State of Texas.

ARGUMENT AND AUTHORITIES

Petitioner brought this action against Respondents, claiming that his business as an agent or representative of others in the settlement of personal injury and insurance claims was afforded protection of the United States Constitution and the anti-trust laws of the United States. The State of Texas had obtained a prior judgment in Texas state court which specifically found that the activities by Petitioner violated the State's law regarding the unauthorized practice of law and State insurance law. Petitioner appealed the State District court judgment, which resulted in an Petitioner finding in favor of the Respondents, supporting the State District Court's judgment. At all times in the state court proceedings, Petitioner chose to represent himself and had full opportunity to, and did, raise the same issues in the state court as represented in the United States District Court below. *Brown vs. Unauthorized Practice of Law Committee*, 742 S.W. 2nd 34 (Tex.Civ.App.-Dallas 1987). Petitioner exhausted all avenues of appeal regarding the issues which were presented, or which could have been presented, during the state court proceedings.

The principal reason for the dismissal of Petitioner's claims is the lack of standing. The principal decision in this area is *Turner vs. American Bar Association* 407 F.Supp. 451, (N.D. Tex., 1975), *aff'd. sub nom.*; *Taylor vs. Montgomery*,

539 F.2d 715 (7th Cir. 1976); *Pilla v. American Bar Association*, 452 F.2d 56 (8th Cir. 1976) at 479 in which the Court stated that in an anti-trust action, "the plaintiff must sufficiently allege *and* demonstrate that his *legally cognizable business or property* has been injured as a proximate result of the alleged violation of the anti-trust laws." As a matter of law, from the authorities cited by the Respondents, there exists no right or privilege under the First or Sixth Amendments to the United States Constitution to have an unlicensed layman represent other parties in litigation or settlement of insurance disputes. Thus, the claims by Petitioner are void and are the proper subject of dismissal, and the denial of the Petition for Certiorari. The Respondents urged that this cause of action be classified for what it is, and not for how it is creatively styled. In this appeal, Petitioner sues the Respondents to force them to permit him to practice law and to represent insurance claimants, despite the fact that he is not licensed by the State of Texas for either of these activities. Petitioner's lack of licensing is evidenced by his response to Appellee's Interrogatory Number 26, which was attached to the Motion to Dismiss below. The Texas Legislature has mandated that attorneys be licensed and that State Insurance adjusters be licensed. Petitioner seeks to have a federal court overrule these state decisions, and to substitute the decision by the federal court for that of the state. Such a position completely ignores the *Younger* abstention doctrine. Clearly, the practice of law and settlement of insurance disputes are matters of vital state interest and sovereignty. *Bates vs. State Bar of Arizona*, 433 U.S. 350 at 359-60, 97 S.Ct. 2691 at 2696-97, 53 L.Ed.2d 810 (1977). In *Hoover v. Ronwin*, 466 U.S. 558 (1984) at 569, the Court citing *Parker v. Brown*, 317 U.S. 341 (1943), declined to "construe the Sherman Act as prohibiting the anti-competitive actions of a state acting through its legislature When a state legislature adopts legislation, its actions constitute those of the State . . . and are *ipso facto* exempt from

the operation of anti-trust laws . . . The Court . . . has found the degree to which the state legislature or Supreme Court supervises its representative to be relevant to the inquiry . . . When the conduct is that of the sovereign itself, on the other hand, the danger of unauthorized restraint of trade does not arise." The State of Texas in these situations seeks to prevent fraud from being perpetrated upon its citizens by unauthorized and unlicensed representatives. Similarly, the State of Texas seeks to prevent fraud and incompetence from being perpetrated upon its citizens by those unlicensed to practice law. These activities have been recognized by the Supreme Court as matters of vital state interest in *Middlesex Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 (1982) at 433-434.

Petitioner has failed to demonstrate a denial of due process, bad faith, harassment, or any other exceptional circumstance which justifies intervention by Federal Court. Petitioner has had the opportunity to raise these issues time and time again in the state court proceedings and in his appeal, but has failed to do so. Therefore, as a matter of law, Petitioner is collaterally estopped from raising these issues again in Federal Court. There is no evidence that Petitioner has introduced and the Court below reflecting that the State Court action was a "sham" as he has depicted same. The lower Court afforded Petitioner the opportunity to respond to the Motions to Dismiss filed by Respondents, but Petitioner offered no evidence or authority to support his position that all of the courts and judges which heard his appeal in the state court proceedings deprived him of civil rights or federally protected constitutional rights.

As was noted in the Respondents' Brief, in the Support of the Motion to Dismiss in the District Court and in their brief before the Court of Appeals, and in all of the briefs and motions filed by Petitioner, he has repeatedly cited inappropriate and inapplicable authorities. He picks and chos

language from court decisions which seem appropriate, but when read in context of the decision, are inopposite of the decision. Petitioner ignores the fact that his "business" has been repeatedly adjudicated by both Federal and State Courts, including this Honorable Supreme Court, as being illegal, and not protected by Federal Law, including anti-trust laws. In order to obtain protection of the Sherman Act, the business conducted by a party must be legal. Such is simply not the case in the current matter. Therefore, no federal protection should be afforded to illegal activities conducted by Petitioner.

CONCLUSION

The Court of Appeals and the District Court below properly granted the Appellees' Motion to Dismiss inasmuch as there is no evidence of any probative force or genuine issue of fact. The activities conducted by Petitioner are those of an illegal nature which violate State Law concerning issues of vital importance to the State. The trial court below afforded Petitioner full opportunity to introduce factual evidence to support his contention that he was denied due process in his State Court proceedings. Pursuant to the arguments involved in collateral estoppel and the *Younger* abstention doctrine, the trial court properly dismissed his action for the reasons and by the authorities cited in the Memorandum Order of May 12, 1988. Thus, the claims by Petitioner were properly dismissed, because as a matter of law, his activities are not protected, there has been no violation of due process, and Petitioner has not cited any authority to the Court to permit jurisdiction to lie. The Answers by Petitioner to Interrogatories establishes these facts as well. Therefore, no issue exists which should disturb the Judgment and Order of the Honorable Courts below.

WHEREFORE, PREMISES CONSIDERED, Respondents-Appellees Members Insurance Group, Ruth Hunter and Leonard Adkins respectfully move this Honorable Supreme Court to dismiss the Petition for Certiorari and alternatively to sustain and affirm the decision of the Court of Appeals for the Fifth Circuit and the United States District Court for the Northern District of Texas.

Respectfully submitted,

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By: 


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CERTIFICATE OF SERVICE

I certify that copies of the Respondents-Appellees' Brief have been mailed to the Petitioner and all interested parties via certified mail, return receipt requested, this ~~6th~~ day of ~~August, 1989~~

September

A handwritten signature in cursive script, appearing to read "Patrick A. Teeling", written over a horizontal line.

Patrick A. Teeling

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NO. 89-227
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

RON BROWN,

Petitioner

v.

VIAL, HAMILTON, KOCH & KNOX, ET AL.,

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS STATE
UNAUTHORIZED PRACTICE OF LAW COMMITTEE
AND JAMES D. BLUME

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QUESTION PRESENTED

Whether a non-lawyer has a constitutional or other federal right to practice law by advising and representing clients in disputes with insurance companies.

LIST OF PARTIES

Respondent State Unauthorized Practice of Law Committee is a statutorily-created body appointed by the Texas Supreme Court and budgetarily funded in conjunction with the State Bar of Texas. Respondent James D. Blume has never used the name "Jim Bloom." Respondents otherwise defer to the lists of parties provided by Petitioner and the other Respondents.

TABLE OF CONTENTS

	<u>Page</u>
Question Presented	1
List of Parties	1
Table of Contents	1
Table of Authorities	2
Jurisdiction	3
Statement of the Case	3
Summary of Argument	4
Reasons for Denying the Writ	4
1. There is no important question of federal law which should be settled by the Court in this case.	
2. The Fifth Circuit's decision is not in conflict with decisions of other courts.	
3. Petitioner's remaining grounds are not properly before the Court.	
Conclusion	6

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<u>Bates v. State Bar of Arizona</u> , 433 U.S. 350 (1977)	4
<u>Goodman v. Beall</u> , 130 Ohio St. 427, 200 N.E. 470 (1936)	5
<u>Guajardo v. Luna</u> , 432 F.2d 1324, 1325 (5th Cir. 1970)	4
<u>Hefner v. Alexander</u> , 779 F. 2d 277 (5th Cir. 1985)	4
<u>Hoover v. Ronwin</u> , 466 U.S. 558, 569 (1984)	4
<u>Liberty Mutual Insurance Co. v. Jones</u> , 130 S.W.2d 945 (Mo. 1939)	5
<u>Lindstrom v. Illinois</u> , 632 F. Supp. 1535, 1538-39 (N.D. Ill. 1986), <u>appeal dismissed</u> , 828 F.2d 21 (7th Cir. 1987)	4
<u>Parker v. Brown</u> , 317 U.S. 341 (1943)	5
<u>Turner v. American Bar Association</u> , 407 F. Supp. 451, 479 (N.D. Tex. 1975), <u>aff'd sub nom.</u> , <u>Pilla v. American Bar Association</u> , 542 F.2d 56 (8th Cir. 1976)	4

STATUTE

28 U.S.C.A. § 2101(c)(Supp.1989)	5
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RULE

Sup. Ct. R. 20	5
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JURISDICTION

Petitioner accurately describes the dates of the judgment and order denying rehearing entered by the United States Court of Appeals for the Fifth Circuit. Petitioner incorrectly bases his claim to jurisdiction, however, on 28 U.S.C. § 1257 and incorrectly styles this proceeding as an "appeal."

STATEMENT OF THE CASE

Petitioner Ron Brown and Ron Brown & Associates (hereinafter referred to as "Petitioner" or "Brown") filed a complaint pursuant to 28 U.S.C. § 1331 on November 9, 1987 in the United States District Court for the Northern District of Texas, Dallas Division, alleging violations of the Sherman Act (15 U.S.C. §§ 1 et seq.), violations of the First, Fifth, and Fourteenth Amendments of the United States Constitution, libel, slander and tortious interference of contracts. The district court, after considering motions for dismissal and for summary judgment submitted by the Defendants, entered a Memorandum Order (App. B-1) and Judgment (App. B-14) on May 12, 1988, granting the Defendants' motions. The United States Court of Appeals for the Fifth Circuit affirmed on April 18, 1989, and denied motion for rehearing on May 12, 1989. App. A-1; App. A-11.

Prior to Petitioner's filing of his federal action, the State Committee had sued him in the 160th District Court of Dallas County, Texas and had obtained a judgment (App. D-1) permanently enjoining him from engaging in the unauthorized practice of law by advising and representing clients in the settlement of insurance claims. That injunction was affirmed on appeal by the Texas Court of Appeals, Fifth District. Brown v. Unauthorized Practice of Law Committee, 742 S.W.2d 34 (Tex. App. - Dallas 1987, writ denied) (App. C-1). Writ of error was denied by the Texas Supreme Court on January 22, 1988 and rehearing denied on March 2, 1988. Brown did not apply for writ of certiorari as to that state court judgment.

SUMMARY OF ARGUMENT

The Fifth Circuit's opinion presents no important undecided questions of federal law and is in harmony with other decisions on the same issues. Petitioner's other grounds merely rehash what was decided in earlier state court litigation and are not properly before the Court at this time.

REASONS FOR DENYING THE WRIT

1. There is no important question of federal law which should be settled by the Court in this case.

The district court's summary judgment and the Fifth Circuit's affirmance are consistent with decisions of other federal courts that a non-lawyer does not have a constitutional right or guarantee to practice law, be it under the First, Fifth or Fourteenth Amendments. Guajardo v. Luna, 432 F.2d 1324, 1325 (5th Cir. 1970); Turner v. American Bar Association, 407 F. Supp. 451, 479 (N.D. Tex. 1975), aff'd sub nom., Pilla v. American Bar Association, 542 F.2d 567 (8th Cir. 1976). Similarly, courts have also held that state laws prohibiting the unauthorized practice of law do not violate the First, Fifth or Fourteenth Amendments. Guajardo, supra; Lindstrom v. Illinois, 632 F. Supp. 1535, 1538-39 (N.D. Ill. 1986), appeal dismissed, 828 F.2d 21 (7th Cir. 1987). There is nothing novel in Petitioner's attempted refutation of these already-decided constitutional questions.

Nor does Petitioner present any important antitrust issue. The State of Texas, both in the legislative passage of its unauthorized practice of law statute and in the State Unauthorized Practice of Law Committee's enforcement of the statute by judicial proceedings, was clearly acting in its sovereign capacity and within the State Action Doctrine. Hoover v. Ronwin, 466 U.S. 558, 569 (1984) (action of state bar committee immune under State Action Doctrine); Bates v. State Bar of Arizona, 433 U.S. 350 (1977) (state bar immune). Accord Hefner v. Alexander, 779 F.2d 277 (5th Cir. 1985) (State Bar of Texas and its appointees

and directors immune).¹ See also Parker v. Brown, 317 U.S. 341 (1943).

2. The Fifth Circuit's decision is not in conflict with decisions of other courts.

Petitioner claims that two antique decisions conflict with the Fifth Circuit's decision – Goodman v. Beall, 130 Ohio St. 427, 200 N.E. 470 (1936) and Liberty Mutual Insurance Co. v. Jones, 130 S.W.2d 945 (Mo. 1939). Neither case conflicts.

Goodman was merely a non-adversarial case holding under Ohio law that some proceedings before the Ohio Industrial Commission required representatives to be lawyers and some did not. Liberty Mutual merely held under Missouri law that insurance companies could use adjusters. Neither case decided a federal or constitutional question; neither case addressed Texas law; neither case presented the same facts as the present case.

There is no conflict between the Fifth Circuit decision and the two state decisions, much less a conflict concerning a federal question.

3. Petitioner's remaining grounds are not properly before the Court.

The remainder of Petitioner's application is merely a rehash of arguments made, or which should have been made, in the earlier state court litigation. The state court litigation ended on March 2, 1988 (i.e., more than 90 days prior to Petitioner's filing) and hence all such other issues are out of time under 28 U.S.C. § 2101(c) and Supreme Court Rule 20.

¹Respondent Blume, being an appointee of the State Committee, hence properly enjoys the same immunity.

CONCLUSION

Petitioner's application should be denied.

Respectfully submitted,

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September 5, 1989

OCT 3 1989

JOSEPH E. SPANIOLO, JR.
CLERK

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PETITIONER'S REPLY BRIEF

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i.
TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
REPLY BRIEF	1-8
CONCLUSION	8
PROOF OF SERVICE.....	9-11



ii.
TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972)	4, 6
Eastern Railroad Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961)	6, 8
Goodman v. Beall, 200 N.E. 470 (1936)	5, 7
In Re BODKIN, 173 N.E. 2d 440 (1961).....	3
Liberty Mutual Insurance Co. v. Jones, 130 S.W. 2d 945 (1939)	5, 7
United Mine Workers of America v. Pennington, 381 U.S. 657 (1965)	6
U.S. v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940)	4, 6
 <u>Statutes</u>	
Tex. Ins. Code Art. 21.07-4 §1(a).....	3
 <u>Miscellaneous</u>	
Statement of Principles on Respective Rights and Duties of Lawyers and Laymen in the Business of Adjusting Insurance Claims	5



1.
REPLY BRIEF

The argument of all Respondents centers on the belief that Petitioner's activity in negotiating the settlement of a personal injury claim on behalf of a citizen/claimant constitutes the unauthorized practice of law. That same or similar individuals, i.e., insurance claim adjusters, do not negotiate the settlement of insurance claims on behalf of citizen/insureds of insurance corporations. Respondents conclude that, as such, Petitioner is not denied equal protection because he was engaged in an illegal business and therefore no federal protection should be afforded.

This (Respondents') argument only serves to heighten the reasons why this honorable Court should, and must exercise jurisdiction to hear this case to resolve the conflicts and/or to establish some guidelines for all the states of last resort to uniformly follow.



2.

The question of "whether or not a non-lawyer can negotiate the settlement of an insurance claim" on behalf of a citizen/claimant is of important constitutional dimensions.

Particularly, since Respondents seek to enforce and/or apply the varying state rules in an 'unequal' and arbitrary manner.

For instance, the Respondents seem to suggest that insurance claim adjusters who work for citizens/insureds of insurance corporations do not negotiate the settlement of insurance claims.

This is simply not true. Please see APPENDIX C-11 wherein one of these Respondents (i.e., Ruth Hunter) testified that "her job was to evaluate the claim and get back to Brown [i.e., Petitioner] regarding settlement of the claim."



3.

Moreover, in Illinois, the Supreme Court of that State stated that "there is no decision in Illinois as to whether or not settlement of a personal injury claim constitutes the practice of law." In Re BODKIN, 173 N.E. 2d 440, 441 (1961).

Further, Respondents suggest that Petitioner was also involved in the handling of disputed insurance claims.

This too is simply not true. In fact, Respondents have presented no evidence in any court that Petitioner has engaged in conduct inconsistent with the statutory provisions of a licensed insurance adjuster. Tex. Ins. Code Art. 21.07-4 §1(a) (Vernon 1981).

Also, please see APPENDIX C-13; C-15 and C-16 wherein another of these Respondents (i.e., Van Sims) testified that "the issue of liability was never in dispute between them; that no legal question arose in his dealings with Brown (Petitioner); and that his (Sims') company (i.e., Fireman's Fund Insurance Company--another Respondent in this case) had already accepted liability on the claim."

Respondent Sims also testified that "the insurance adjusters' license allows a non-lawyer adjuster to adjust claims "and make settlements" concerning monetary value on behalf of his employer."



5.

Clearly, therefore, the adjustment and/or settlement of a personal injury claim by a non-lawyer on behalf of another, when the issue of liability is clear, accepted or undisputed, does not constitute the practice of law or the doing of law business. Liberty Mutual Insurance Company v. Jones, 130 S.W. 2d 945 (1939), Goodman v. Beall, 200 N.E. 470 (1936). See also, Statement of Principles on Respective Rights and Duties of Lawyers and Laymen in the Business of Adjusting Insurance Claims.

Petitioner was licensed to adjust insurance claims in the State of Texas. As such, Petitioner was involved in a business duly recognized and licensed by the State of Texas. Federal protection should and must be afforded for the survival of Petitioner's chosen trade or profession.

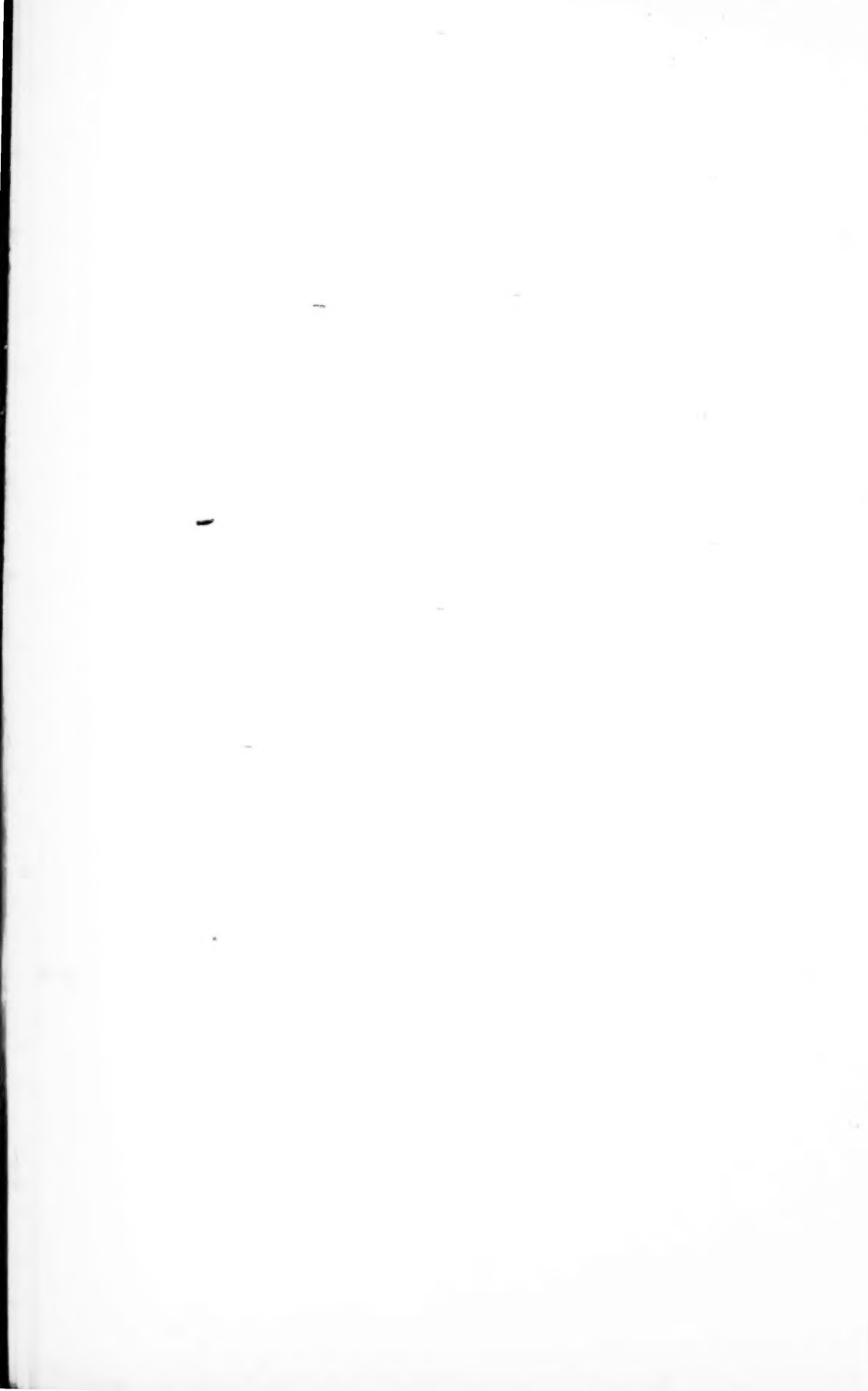
California Motor Transport Company v. Trucking Unlimited, 404 U.S. 508 (1972); U.S. v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940); Eastern Railroad Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mine Workers of America v. Pennington, 381 U.S. 657, 669-671 (1965).



Finally, Respondents maintain that neither the Goodman or Liberty cases decided a federal or constitutional question, and that neither case presented the same facts as the present case.

Again, this is simply not true. The Goodman and Liberty cases both involved "the adjustment and/or settlement of personal injury claims by a non-lawyer on behalf of another"--as is in the case at bar.

In addition, the Liberty court specifically decided a federal or constitutional question. The court stated, upon rehearing, that "if the statute forbids the doing of the things permitted by the opinion, it is that far unconstitutional, as against Sec. 1 of the Fourteenth Amendment of the Federal Constitution, U.S.C.A. and Sections 4 and 30, Article II of the Missouri Constitution." Liberty Mutual Insurance Company v. Jones, supra at 962.



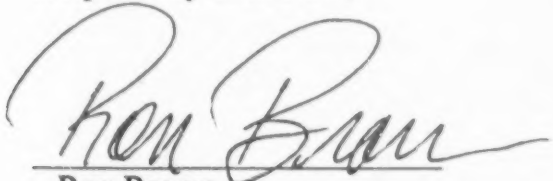
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CONCLUSION

Thus, again, it is imperative that this honorable Court hear this case and resolve the conflict among the states of last resort.

The disposition "as law and justice require" for Petitioner is a reversal of the judgment against him, and the entry of an Order requiring the various states to uniformly comply with the decision of this honorable Court rendered herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ron Brown", written over a horizontal line.

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PROOF OF SERVICE

STATE OF TEXAS

ss:

COUNTY OF DALLAS

RON BROWN, after first being duly sworn,
deposes and says that pursuant to Rule 28 of the



10.

Rules of this Court he served the within Reply Brief on all counsel for the Respondents by enclosing a copy thereof in an envelope, first class postage prepaid, certified mail, return receipt requested, addressed to the following:

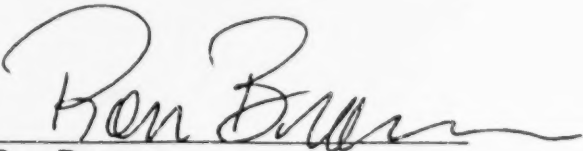
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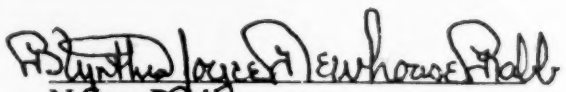
and depositing same in the United States Mail at Dallas,

Texas on this 3RD day of OCTOBER, 1989.


Ron Brown

SUBSCRIBED AND SWORN to before me this

3rd day of October, 1989.


Notary Public
Dallas County, Texas
My Commission Expires: 10/27/91